



159TACD2022

Between

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by the [REDACTED] [REDACTED] (“the Appellant”) against the imposition by the Revenue Commissioners (“the Respondent”) of customs duty and Value Added Tax (“VAT”) in the amount of €11217.95 (customs duty of €784.60 and VAT of €10433.35) on the importation of statues and ironworks (“the Goods”) from China in September 2020.
2. The appeal proceeded by way of a hearing on 31 August 2022.

Background

3. The Goods were purchased from [REDACTED] China (“the Sender”). On 9 July 2020, the Sender issued an invoice in the amount of \$58,350. The Goods were transported from China to Ireland by ship.
4. On 15 September 2020, [REDACTED], trustee of the Appellant, sought an exemption from import duty and VAT from the Respondent for the Goods “for charitable and humanitarian organisations”. The Respondent replied, setting out three categories of goods which qualify for relief.

5. Following further correspondence, on 16 September 2020 ██████ informed the Respondent that *“the [Goods] are for fund-raising at occasional charity events for the benefit of people and the donation if there are any will be allocated to the Monastery to maintain the statues and reserve ██████ Monastery itself only.”*
6. On 17 September 2020, the Respondent notified the Appellant that it did not consider that the Goods qualified for relief. Following further correspondence, including a letter from the Sender which stated that the Goods were *“donated by [the Sender]...They are not for commercial use”*, on 21 September 2020 the Respondent confirmed its view that the Goods did not qualify for relief.
7. There was then further correspondence between the Appellant and a different unit of the Respondent. On 24 September 2020, a Principal Officer of the Respondent issued a decision letter which stated that *“relief from customs import duties and VAT is not applicable”* and set out grounds for the decision.
8. On 5 October 2020, the Appellant sought an internal appeal of the Respondent’s decision. On 30 October 2020, the appeals officer upheld the earlier decision refusing the relief sought.
9. On 14 January 2021, the Appellant issued a Notice of Late Appeal to the Commission. There was no objection raised by the Respondent to the late appeal, which accordingly was accepted by the Commission.
10. On 31 August 2022, a remote hearing of the appeal took place.

Legislation and Guidelines

11. Article 61 of Regulation 1186/2009/EC (“the Customs Reliefs Regulation”) states that

“1. Subject to Articles 63 and 64, the following shall be admitted free of import duties, in so far as this does not give rise to abuses or major distortions of competition:

(a) basic necessities imported by State organisations or other charitable or philanthropic organisations approved by the competent authorities for distribution free of charge to needy persons;

(b) goods of every description sent free of charge, by a person or an organisation established outside the customs territory of the Community, and without any commercial intent on the part of the sender, to State organisations or other charitable or philanthropic organisations approved by the competent authorities, to

be used for fund-raising at occasional charity events for the benefit of needy persons;

(c) equipment and office materials sent free of charge, by a person or an organisation established outside the customs territory of the Community, and without any commercial intent on the part of the sender, to charitable or philanthropic organisations approved by the competent authorities, to be used solely for the purpose of meeting their operating needs or carrying out their charitable or philanthropic aims.

2. For the purposes of paragraph 1(a), 'basic necessities' means those goods required to meet the immediate needs of human beings, for example food, medicine, clothing and bed-clothes."

12. Regulation 10(1) of the European Communities (Exemption from Value-Added Tax on the Permanent Importation of Certain Goods) Regulations 2012 (SI 267/2012) states that

"Subject to paragraphs (2) to (7) and to any limit as to quantity or value that the Revenue Commissioners may impose in order to remedy any abuse and to combat major distortions of competition, tax shall not be charged on the importation of—

(a) basic human necessities obtained free of charge by State organisations or by charitable or philanthropic organisations approved by the Revenue Commissioners for distribution free of charge to needy persons,

(b) goods sent free of charge by a person or organisation established abroad, and without any commercial intent on the part of the sender, to State organisations or charitable or philanthropic organisations approved by the Revenue Commissioners, for the purposes of fund-raising at occasional charity events for the benefit of needy persons,

and

(c) equipment and office materials sent free of charge by a person or organisation established abroad, and without any commercial intent on the part of the sender, to charitable or philanthropic organisations approved by the Revenue Commissioners, for use solely for the purpose of meeting their operating needs or carrying out their stated charitable or philanthropic aims."

Submissions

13. At the hearing herein, evidence was heard from [REDACTED] on behalf of the Appellant and from [REDACTED] on behalf of the Respondent. Submissions were heard from counsel for the Respondent.

Appellant's Evidence [REDACTED]

14. [REDACTED] stated that he had imported items previously on behalf of the Appellant that had received relief from import duty and VAT, and he did not understand why the same had not occurred on this occasion.

15. He stated that the Appellant had used [REDACTED] as customs agents for the Goods, but that he had understood them to be the Respondent rather than independent agents. The agents had advised the Appellant that, in their opinion, the Goods did not qualify for relief.

16. [REDACTED] stated that the Goods were placed in a monastery in [REDACTED] and that there was a collection box in the monastery. Any donations placed in the box were used for a number of purposes, including both upkeep of the monastery and the relief of needy persons. [REDACTED] stated that, as one donations box was used, it was not possible to specify what proportion of the donations received were intended for the relief of needy persons. There was not a specific donations box for the Goods, and the donations box in the monastery was in place before the Goods were installed there.

17. He stated that the Goods had been paid for by [REDACTED] businessman who donated them to the Appellant. He did not know the name of this businessman, whom he stated had dealt with the [REDACTED] and not him. He confirmed that the Goods were sent directly from China to Ireland by the Sender.

18. [REDACTED] stated that he understood that other religious congregations in Ireland had been permitted to import similar items without paying import duty or VAT. He stated that he believed the Goods had been imported for humanitarian purposes and in accordance with the charitable status of the Appellant and that accordingly they should be afforded relief.

Respondent's Evidence [REDACTED])

19. Ms [REDACTED] stated that she was an officer of the Respondent who worked in the area of providing advice on importation of goods and relevant reliefs for same. She stated that she was aware that the Appellant had imported goods in 2015 that had attracted relief. These goods consisted of items including beds, toilets and accessories and in the opinion of the

Respondent constituted basic necessities sent for the purpose of meeting the Appellant's operating needs. The total value of those goods was approximately €900.

20. [REDACTED] stated that she did not believe the Appellant had previously imported items similar to the Goods at issue in this appeal which had attracted relief. She stated that similar items were imported in February 2021 on which the Appellant had paid customs duty and VAT.

Respondent's Submissions

21. Counsel for the Respondent submitted that both relief from import duties and exemption from import VAT are derived from EU law measures, and that it was a well-known principle that such reliefs/exemptions should be interpreted strictly.

22. He submitted that the relevant conditions for both the relief and the exemption were substantially the same and required that the Goods:

- (i) were sent free of charge;
- (ii) by a person or organisation established outside the EU;
- (iii) without any commercial intent on the part of the sender;
- (iv) to State organisations or other charitable or philanthropic organisations approved by the Respondent;
- (v) to be used for fund-raising at occasional charity events for the benefit of needy persons.

23. He submitted that the Appellant bore the burden of proof to demonstrate that the Goods satisfied the above conditions. He submitted that the evidence before the Commissioner was not sufficient to demonstrate that the Goods were sent "*free of charge*" by a person outside the EU "*without any commercial intent*". He further submitted that the Appellant had not demonstrated that the Goods were to be "*used for fund-raising at occasional charity events for the benefit of needy persons.*"

24. Consequently, counsel submitted that the Appellant was not entitled to the relief sought.

Material Facts

25. Having read the documentation submitted, and having listened to the oral evidence submissions at the hearing, the Commissioner makes the following findings of material fact

25.1. The Goods were sent by the Sender in China to the Appellant in Ireland in July 2020. The Sender issued an invoice for the Goods in the amount of \$58,350.

25.2. In September 2020 the Appellant paid customs duty of €784.60 and VAT of €10433.35 for release of the Goods.

25.3. The Goods were placed by the Appellant in a monastery in [REDACTED] where they remain. There is a donation box placed in the monastery.

Analysis

26. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”

27. The rules regarding imposition of both customs duty and VAT derive from EU law. The Customs Reliefs Regulation is directly applicable. SI 267/2012 transposes Directive 2009/132/EC (“the Import Exemptions Directive”), concerning the exemption from VAT on the permanent importation of certain goods, into Irish law.

28. The relevant provisions for the purposes of this appeal are Article 61 of the Customs Reliefs Regulation and regulation 10(1) of SI 267/2012. These provisions are essentially in the same terms. The Appellant has claimed relief under paragraph (b) of both provisions.

29. The Commissioner agrees with the submission of the Respondent that the relevant conditions to be satisfied under paragraph (b) are that the Goods:

- (i) were sent free of charge;
- (ii) by a person or organisation established outside the EU;
- (iii) without any commercial intent on the part of the sender;
- (iv) to State organisations or other charitable or philanthropic organisations approved by the Respondent;
- (v) to be used for fund-raising at occasional charity events for the benefit of needy persons.

It is necessary for the Appellant to demonstrate that each of these conditions has been satisfied in order to be entitled to the relief sought.

30. The Commissioner is satisfied that the Sender is located in China and that therefore condition (ii) above has been met. However, the Commissioner is not satisfied that the Appellant has demonstrated that conditions (i) and (iii) have been met, i.e. that the Goods were sent free of charge without any commercial intent on the part of the Sender. The

Appellant claimed that the Goods had been paid for by ██████ businessman as a donation. ██████ did not have details of this businessman, and there was no evidence of his identity before the Commissioner, save for the letter from the Sender which the Appellant sent to the Respondent on 18 September 2020 and which stated that the Goods were “*donated by [the Sender]...They are not for commercial use*”. That letter did not make reference to ██████ businessman.

31. However, even if the Commissioner was satisfied to find that the Goods had been paid for by the ██████ businessman, he does not consider that this would be sufficient to satisfy conditions (i) and (iii). This is because it is clear from the evidence that the Goods were not sent free of charge; rather the Sender issued an invoice for \$58,350. It seems to the Commissioner that, in order for condition (i) to be met, the Sender could not have received any payment, whether from the Appellant, a benefactor or any other party. Furthermore, it is clear to the Commissioner that the Goods were sent *with* commercial intent on the part of the Sender, as it issued an invoice for them and did not send them to the Appellant at no cost. Therefore, the Commissioner is satisfied that condition (iii) has not been met.
32. As he is satisfied that conditions (i) and (iii) have not been met, it follows that the Commissioner finds that the Appellant is not entitled to the reliefs sought and it is not necessary to consider conditions (iv) or (v). However, for completion, those conditions will now be addressed.
33. The Appellant stated that it was a charitable organisation, and this was not disputed by the Respondent. Therefore, the Commissioner finds that condition (iv) is satisfied. However, he does not consider that the evidence was sufficient to find that condition (v) is met, i.e. that the Goods were to be used for fund-raising at occasional charity events for the benefit of needy persons. The Appellant stated that the Goods were placed in the monastery, where people could come and place money in a nearby donation box if they wished. Some of the donations received would be used for the benefit of needy persons. However, it did not appear to the Commissioner that the Goods would be used for the purpose of fund-raising, but rather that any such fund-raising would be incidental to their presence in the monastery. Furthermore, there was not sufficient evidence to demonstrate that the Goods would be used “*at occasional charity events*”; it seemed to the Commissioner that the intention was for the Goods to remain in the monastery and there was no evidence provided of future charity events where they would be used for fund-raising. Consequently, the Commissioner finds that condition (v) has not been met.
34. Therefore, it follows that the Commissioner finds that the Appellant is not entitled to the relief sought. For the purposes of completion, the Commissioner has considered whether

paragraphs (a) or (c) of Article 61 and Regulation 10(1) might be relevant in this instance, notwithstanding that they were not invoked by the Appellant. Regarding paragraph (a), the Commissioner is satisfied that the Goods could not be considered to constitute “basic necessities”. Regarding paragraph (c), it is possible that the Goods could be considered to constitute “*Equipment...used solely...to carry out the aims of the organisation or charity.*” However, the Commissioner accepts that exemptions and reliefs to taxes and duties arising under EU law must be interpreted strictly, and he considers it unlikely that “equipment” is a broad enough term to incorporate statues and ironworks. In any event, it is also a requirement of paragraph (c) that the relevant items be sent free of charge, and as set out above, the Commissioner is satisfied that the Goods in this appeal were not sent free of charge. Consequently, the Commissioner is satisfied that paragraphs (a) and (c) of Article 61 / Regulation 10(1) do not and could not apply to grant the relief sought by the Appellant.

35. Finally, the Commissioner notes that the Appellant claimed that it believed other religious congregations had been treated more leniently by the Respondent in respect of the importation of similar goods. However, the Appellant did not provide any evidence of such allegedly more favourable treatment, and the Commissioner accepts the evidence of Ms [REDACTED] that the Revenue did not unfairly discriminate against the Appellant in its application of the relevant laws. Additionally, the Commissioner notes that [REDACTED] made reference to CJEU Case C-74/16, which he believed supported the Appellant’s position. The Commissioner has reviewed the judgment in that case, which considered whether building works carried out by a religious congregation might breach State Aid rules, and as it did not consider the question of customs duty or VAT on imports, he is satisfied that the matters set out therein do not impinge on this appeal.

Determination

36. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in imposing customs duty of €784.60 and VAT of €10433.35 on the Goods imported by the Appellant in September 2020.

37. The Commissioner appreciates that this this outcome will be disappointing for the Appellant. However, he is satisfied that the Respondent correctly applied the relevant law and did not have discretion to grant the relief sought.

38. The appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act 1997 as amended (“the TCA 1997”). This determination contains full

findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Appeal Commissioner
30 September 2022