



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

185TACD2024

Between

████████████████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) under section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) to certify VAT vouchers in respect of goods purchased by the Appellant (“the Goods”), on the ground that the Goods had not been presented to a customs officer at the final point of exit from the European Union (“the EU”).
2. On 6 August 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties has objected or requested a hearing. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. The “Retail Export Scheme” allows a traveller resident outside of the EU to claim a refund of VAT charged on qualifying goods purchased in the EU. The scheme requires proof of purchase and proof of export. As the Commissioner discusses below, the proof of export is provided by way of an invoice issued to the traveller (also referred to as an “export voucher” or “VAT voucher”), which must be certified by a customs officer.
4. On 15 June 2023, the Appellant submitted email correspondence to the Commission. The email correspondence showed that on 30 May 2023, Fexco (“the VAT refunding agent”) informed the Appellant that the Respondent had refused to certify VAT vouchers in respect of the Goods.
5. On 25 June 2023, the Appellant, with an address in [REDACTED], submitted a Notice of Appeal to the Commission.
6. On 5 July 2023, the Respondent wrote to the Appellant to inform him of its decision to refuse a first stage appeal, on the ground that as the Goods and documents were not presented to the Respondent as required, the Respondent could not provide a customs validation stamp.
7. On 28 August 2023, the Appellant confirmed that he wished to pursue a second stage appeal with the Commission.
8. On 21 November 2023, the Respondent submitted a Statement of Case to the Commission.

9. On 24 November 2023, the Appellant sent an email to the Commission. On 20 December 2023, the Appellant confirmed that his email of 24 November 2023 was his full Statement of Case.
10. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation and Guidelines

11. The legislation relevant to this appeal is as follows:

12. Section 58 of the Value-Added Tax Consolidation Act 2010 ("VATCA 2010") provides:

"(1) In this section -

"traveller" means a person whose domicile or habitual residence is not situated within the Community;

"traveller's qualifying goods" means goods (other than goods transported by the traveller for the equipping, fuelling and provisioning of pleasure boats, private aircraft or other means of transport for private use) which are supplied within the State to a traveller and which are exported by or on behalf of that traveller by the last day of the 3rd month following the month in which the supply takes place;

"VAT refunding agent" means a person who supplies services which consist of the procurement of a zero-rating (within the meaning of subsection (2)) or repayment of tax in relation to supplies of a traveller's qualifying goods.

(2) The Revenue Commissioners shall, subject to and in accordance with regulations (if any), allow the application of section 46(1)(b) (in this section referred to as "zero-rating") to -

(a) the supply of a traveller's qualifying goods, where the total value of that supply of goods, including tax, is more than €75, and

(b) the supply of services by a VAT refunding agent consisting of the service of repaying the tax claimed by a traveller in relation to the supply of a traveller's qualifying goods or the procurement of the zero-rating of the supply of a traveller's qualifying goods,

where they are satisfied that the supplier of the goods or services, as the case may be -

(i) has at the time of the supply of the goods taken all reasonable steps to confirm that the purchaser is a traveller as defined in this section,

(ii) has proof that the goods were exported by or on behalf of the traveller by the last day of the 3rd month following the month in which the supply takes place,

(iii) has proof that, where an amount of tax has been charged to the traveller in respect of a supply of goods covered by paragraph (ii), that the amount to be repaid to the traveller has been repaid to that traveller no later than the 25th working day following receipt by the supplier of the traveller's claim to repayment,

(iiia) has, in respect of a traveller whose domicile or habitual residence is in the United Kingdom, proof that -

(I) the goods have been imported into the United Kingdom by or on behalf of the traveller, and

(II) value-added tax and duties of customs and excise, chargeable by virtue of the law of the United Kingdom, have been paid on the importation of those goods,

(iv) notifies the traveller in writing of any amount (including the mark-up) charged by the supplier for procuring the repayment of the amount claimed or arranging for the zero-rating of the supply and where an amount so notified is expressed in terms of a percentage or a fraction, such percentage or fraction shall relate to the tax remitted or repayable under this subsection,

(v) uses, as the exchange rate in respect of moneys being repaid to a traveller in a currency other than the currency of the State -

(I) unless subparagraph (II) applies, the latest selling rate recorded by the Central Bank of Ireland for the currency in question at the time of the repayment,

(II) if there is an agreement with the Revenue Commissioners for a method to be used in determining the exchange rate, the exchange rate obtained using that method,

and

(vi) has made known to the traveller such details concerning the transaction as may be specified in regulations.

(3) Regulations may make provision for the authorisation, subject to certain conditions, of accountable persons or a class of accountable persons for the purposes of zero-rating of the supply of a traveller's qualifying goods or to operate as a VAT refunding agent in the handling of a repayment of tax on the supply of a traveller's qualifying goods and such regulations may provide for the cancellation of such authorisation and matters consequential to such cancellation.

(4) A VAT refunding agent acting as such may, in accordance with regulations, treat the tax charged to the traveller on the supply of that traveller's qualifying goods as tax that is deductible by the agent in accordance with section 59(2) provided that that agent fulfils the conditions set out in subsection (2) in respect of that supply.

(5) Where, in relation to a supply of goods, any of the conditions of paragraphs (i) to (vi) of subsection (2) are not complied with or are not complied with within the time limits specified in those paragraphs, where applicable, then -

(a) that supply is not a supply of traveller's qualifying goods, and

(b) zero-rating is not applicable to the supply of services by a VAT refunding agent (if any) in respect of those goods.

(6) For the purposes of this section, and subject to the direction and control of the Revenue Commissioners, any power, function or duty conferred or imposed on them may be exercised or performed on their behalf by an officer of the Revenue Commissioners.”

13. Regulation 15 of the Value-Added Tax Regulations 2010 S.I. 639/2010 (“2010 Regulations”) provides (insofar as is material):

“Regulation 15 Retail Export Scheme

(1) In this Regulation "traveller" and "travellers qualifying goods" have the meanings assigned to them by section 58(1) of the Act.

(2) The application of the rate of zero per cent to a supply of goods or services specified in section 58(2) of the Act is subject to the following conditions:

(a) that, at the time of the supply of the goods to the traveller, the supplier makes, and subsequently retains for the period provided for in Chapter 7 of Part 9 of the Act, a record of the details of the documentary proof inspected by him or her confirming that the purchaser was a traveller,

(b) that, at the time of supply of the goods to the traveller, the supplier issues an invoice to the traveller showing the following details:

(i) the date on which the invoice is issued,

(ii) the name, address and registration number of the supplier,

(iii) the name and address of the traveller,

(iv) a description of the goods supplied,

(v) the amount payable by the traveller at the time of the sale of the goods,

(vi) the tax charged, if any, and

(vii) the exchange rate or method to be used in determining the exchange rate, if repayment of the tax is to be made to the traveller by the supplier in a currency other than the euro,

(c) that the traveller signs the completed invoice referred to at subparagraph (b),

...

(d) that the notification of the charges made by the supplier, referred to in section 58(2) (iv) of the Act, is made at the latest -

(i) where the goods are exported by the traveller, at the time of the handing over of those goods to the traveller,

(ii) where the goods are exported on behalf of the traveller, at the time when those goods are supplied to the traveller,

and where an amount is charged to the traveller for procuring a repayment of tax or arranging for the zero-rating of the supply, such amount does not exceed the amount notified in accordance with section 58(2) (iv) of the Act,

(e) that the time limit for making a repayment to the traveller, referred to in section 58(2) (ii) of the Act, is not later than the twenty-fifth working day following the receipt by the supplier of the traveller's claim to repayment,

(f) that the supplier keeps a copy of the invoice issued in accordance with subparagraph (c), signed by the traveller, and keeps a record in relation to each invoice of -

(i) the net amount (being the amount of tax charged to the traveller minus any commission or fee charged by the supplier to the traveller in respect of

the transaction in question) repaid by the supplier to the traveller in respect of the supply in question, expressed in the currency in which the repayment was made,

(ii) where appropriate, the exchange rate used,

(iii) the date and method of such repayment, and

(iv) proof in accordance with paragraph (3) that the goods were exported by or on behalf of the traveller.

(3) Where the goods -

(a) are exported by the traveller, the proof of export of the goods required shall be the invoice issued in accordance with paragraph 2(b) in respect of that supply, certified -

(i) by an officer of the Commissioners assigned to a customs office in the State,

(ii) where the goods have been exported via another Member State of the Community, by a customs officer in that Member State, or

(iii) in such other manner as the Commissioners may deem acceptable for the purpose,

(b) are exported on behalf of the traveller, the proof of export of the goods shall take the form of documentary evidence of export, certified -

(i) by an officer of the Commissioners assigned to a customs office in the State, or

(ii) where the goods are exported from another Member State of the Community, by a customs officer in that Member State.

(4) Where the value of the goods referred to in paragraph (3) exceeds €2,000, the traveller is required to present both the goods and the invoice issued in accordance with paragraph (2) (b) in respect of the supply of those goods to an officer of the Commissioners assigned to a customs office in the State.”

Submissions

Appellant

14. In his Notice of Appeal, the Appellant submitted the following:

“On Monday April 3 2023, I arrived at Dublin Airport and followed airport protocols and checked my luggage with the items in question secured in my luggage. Having left my luggage with Aer Lingus personnel, I then proceeded through the security checkpoint. Once cleared through security, I proceeded to Horizon VAT Services and met with [REDACTED] [REDACTED], where he asked to see the [REDACTED] in question. I explained they were in my luggage and would not have been allowed past security, and was directed to stow it in my luggage per [REDACTED] staff, as well as following rules for international travel. [REDACTED] suggested that once I was home in [REDACTED], to get a local [REDACTED] newspaper with date clearly visible, and provide a photo of that with the [REDACTED] in question. This was completed within the allotted 30-day timeframe. On June 15, 2023, I forwarded the complete email chain and photos to [REDACTED] [REDACTED] info@taxappeals.ie and confirmed with [REDACTED] on June 16, 2023, that emails and photos were received”.

15. In his Statement of Case, the Appellant submitted the following:

“I had emailed the chain of emails between Horizon and myself to The Tax Appeals Unit back on June 15, 2023. The emails contained pictures of the [REDACTED] [REDACTED] Newspaper on my kitchen counter in [REDACTED] as requested by [REDACTED] at the Horizon VAT Tax Refund Counter at The Dublin Airport. When asked why I did not have [REDACTED] with me, I stated that it’s not legal to go through security, [REDACTED] with them and I was instructed to pack [REDACTED] in my luggage by both [REDACTED] [REDACTED] when we departed Dublin on April 3rd, 2022 and did so. We did not utilize a private shipping company.”

Respondent

16. In its Statement of Case, the Respondent submitted the following (in summary). On approximately 5 April 2023, the Respondent received VAT retail vouchers from the VAT refunding agent for certification, two of which were for single item purchases over the value of €2,000. The vouchers were submitted for payment by the Appellant. The Respondent noticed that the vouchers did not contain customs stamps, which would have indicated that they were not inspected by a customs officer at the time of departure. Based on this assessment, the Respondent was unable to validate the voucher for payment by applying a customs stamp. The Respondent returned the vouchers to the VAT refunding agent. A few days later, the VAT refunding agent asked the Respondent to send a letter to the VAT refunding agent outlining the reasons for refusing the claim. The Respondent did so and the reasons were as follows: *“It is the responsibility of the tourist to familiarise themselves with the requirements of the Retail Export Scheme when claiming a VAT*

refund for items being exported from the EU. The high value (more than €2,000) goods indicated on the vouchers were not presented to Customs, as required, at the final point of exit from the EU. For this reason, the customs validation stamp cannot, nor will be affixed.”

Material Facts

17. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
 - 17.1. The Appellant has a residence or domicile outside of the EU.
 - 17.2. On 3 April 2023, the Appellant passed through Dublin Airport with the Goods.
 - 17.3. The value of the Goods exceeded the amount of €2,000.
 - 17.4. When the Appellant passed through Dublin Airport on 3 April 2023, he did not present the Goods and an invoice for the Goods to a customs officer.
 - 17.5. On or around 5 April 2023, the Respondent refused to certify VAT vouchers in respect of the Goods.
 - 17.6. On 15 June 2023, the Respondent submitted a Notice of Appeal to the Commission.

Analysis

18. This appeal relates to the Respondent’s refusal to certify VAT vouchers in respect of the Goods. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.
19. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to refuse to certify VAT vouchers in respect of the Goods. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

“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”.
20. Section 58(1) of the VATCA 2010 defines a “traveller” as a person whose domicile or habitual residence is not situated within the Community, namely the EU. There was no dispute in this appeal that the Appellant has a residence or domicile outside of the EU

and the Commissioner has found this to be a material fact. There was therefore no dispute that the Appellant was a traveller for the purposes of the legislation. Furthermore, there was no dispute in this appeal that the Goods were the "traveller's qualifying goods" in accordance with section 58(1) of the VATCA 2010.

21. Section 58(2) of the VATCA 2010 provides that the Respondent shall, subject to and in accordance with regulations, allow the application of "zero-rating" of VAT to the supply of a traveller's qualifying goods or the supply of services by a VAT refunding agent, where the Respondent is satisfied that the supplier of the goods or services has met certain conditions.
22. Section 58(2)(ii) of the VATCA 2010 provides that the supplier of the goods or services must have proof that the goods were exported by or on behalf of the traveller by the last day of the third month following the month on which the supply takes place.
23. Regulation 15(2)(b) of the 2010 Regulations requires the supplier to issue an invoice to the traveller at the time of supply of the goods to the traveller. Regulation 15(3)(a)(i) of the 2010 Regulations provides that where the goods are exported by the traveller, the required proof of export shall be the invoice issued in accordance with paragraph 2(b) in respect of that supply, certified by an officer of the Respondent assigned to a customs office in the State. Regulation 15(4) of the 2010 Regulations stipulates that: "*Where the value of the goods referred to in paragraph (3) exceeds €2,000, the traveller is required to present both the goods and the invoice issued in accordance with paragraph (2) (b) in respect of the supply of those goods to an officer of the Commissioners assigned to a customs office in the State*".
24. The wording used in Regulation 15(4) of the 2010 Regulations indicates that the traveller is mandated to present any goods the value of which exceeds €2,000, together with the invoice for the goods, to a customs officer. Regulation 15(4) applies to "*the goods referred to in paragraph (3)*". Regulation 15(4) thereby refers to the goods to be exported, the invoice for which must be certified by a customs officer as proof of export. Consequently, the Commissioner is satisfied that Regulations 15(3) and 15(4) of the 2010 Regulations require that goods, the value of which exceeds €2,000, be presented to a customs officer, for the invoice in respect of those goods to be certified by a customs officer as proof of export.
25. The 2010 Regulations do not provide for an exception to the requirement contained in Regulation 15(4). The Appellant, on whom the burden of proof rests, has not identified any basis on which to disapply this statutory requirement.

26. The Commissioner notes that the Appellant does not dispute either of the following facts, which the Commissioner has found to be material facts: that the value of the Goods exceeded €2,000 and the Appellant did not present the Goods and an invoice for the Goods to a customs officer when the Appellant passed through Dublin Airport on 3 April 2023. The Commissioner acknowledges the explanations which the Appellant has provided for his failure to do so. Nevertheless, those explanations do not negate the fact that the Appellant did not comply with the statutory requirement to present the Goods, and the invoice for the Goods, to a customs officer.
27. As noted above, the Respondent shall allow the application of “zero-rating” of VAT subject to and in accordance with the Regulations. However, the Commissioner finds that on the facts of this appeal, the Appellant did not comply with Regulation 15(4) of the 2010 Regulations. Having so found, the Commissioner is satisfied that the Respondent was correct to refuse to certify VAT vouchers in respect of the Goods.
28. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Appellant was entitled to check whether the Respondent’s refusal to certify VAT vouchers in respect of the Goods was correct. Nonetheless, the legislation does not afford the Commissioner discretion on this matter.

Determination


29. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse to certify VAT vouchers in respect of the Goods, under the 2010 Regulations.
30. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

31. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

32. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Jo Kenny
Appeal Commissioner
19 September 2024