

Tax



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Joshua Carey appears in successful customs appeal for taxpayer

Posted on 11 May, 2025 by | [Joshua Carey](#)

1. The Commissioners for HM Revenue and Customs (“the Revenue”) issued a post clearance demand (“PCD”) to Turkish Food Supplies Limited (“Turkish”) in the sum of approximately £450,000. The basis of the PCD was that Turkish had paid away approximately £720,000 to its supplier based in Turkey for bottled water.

2. The Revenue argued that the £720,000 represented the actual value of the water and therefore there had been an undervaluation on its import declaration. Turkish argued that the sums paid away represented advanced payments for the water to hedge against adverse cost fluctuations, but that it had not actually imported the £720,000; it had only imported £111,000 of water.

3. The First-tier Tribunal (Tax Chamber) (“the FTT”) accepted Joshua’s argument that customs duty was only payable on specific goods that were actually imported (i.e. crossed the frontier). At paragraphs 38, 40 – 41 the FTT found:

- HMRC have not alleged that TFS imported more water than was declared. Officer Wythe confirmed that HMRC made no site visits in connection with this case. The only evidence they have provided of the value of the imported water is the amounts that TFS paid to Vitan. They say that under a “Method 1” valuation, this is all that is required, because under this valuation method, the customs value is the price actually paid for the goods. We accept that this is the case, but without any other evidence about the value of the goods (what Mr Carey referred to as a ballpark figure) we are unable to take a view on whether the goods were worth significantly more than the value declared by TFS on importation. HMRC also did not put to us any reason why TFS might be paying far more for the water than it was worth.

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- It is not sufficient to say that because Vitan supplied goods to TFS, and TFS made payments to Vitan, that import VAT was due on all of the payments. Article 70 of the UCC states that the customs value of goods is the price actually paid or payable for the goods when sold for export. Article 5(18) is clear that a customs debt applies to import or export duty applying to “specific goods”. We find that TFS’s payments to Vitan were not for the import of specific goods. It is not sufficient that the payments were made in anticipation of future imports of unspecified goods on unspecified dates.
- It is clear from the provisions of the VATA 1994 quoted above that, under the law then in force, import VAT was payable on an import of goods to the UK from a place outside the EU. Mr Carey directed us to various dictionary definitions as authorities for the meaning of an “import”. We did not understand Mr Holt to dispute the meaning of an import, but we confirm that we do not consider that term to be wide enough to encompass a payment made in anticipation of an import of goods that were not identified until TFS subsequently placed an order. Once an order had been placed, an import took place of the goods specified in that order, and import VAT was due on those goods when they arrived in the UK. Import VAT was not due on any goods that remained in the factory in Turkey.

4. The FTT’s decision is important because it makes clear that if the Revenue choose to operate a method 1 valuation,

the value to be ascribed to the goods must only be in respect of those “on import”. They cannot simply assert that significant sums of money have been sent to a supplier and therefore that must always be the value ascribed to the imported goods (resulting in a trader being subject to significant customs duty despite not having actually imported the goods). To the contrary, the Revenue need to make sure that the value ascribed to the goods represent only those goods actually imported into the customs territory and must always carefully consider any contractual arrangements that exist between the parties, including those that represent advance payments for goods not actually yet imported.

The full decision can be found [here](#).

Joshua Carey was instructed by Peter Hastings at Rogers & Norton.