



TC 08308

VAT – INPUT TAX – taxable supply – rent of licensed premises - identity of VAT registered person – absence of evidence - appeal dismissed

Appeal number: TC/2019/02085 A/V

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr MPALA MUFWANKOLO

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE JOHN MANUELL
Mrs CELINE CORRIGAN**

The hearing took place on 15 October 2020. The Tribunal heard Mr Gordon Hume of HM Revenue and Customs' Solicitor's Office for the Respondents. The Appellant failed to attend and the Tribunal decided that it was fair and just to proceed in his absence, as is explained further below.

With the consent of the parties, the form of the hearing was by remote video link using the Tribunal video platform. The issues for the Tribunal were narrow, the Tribunal decided a remote hearing was appropriate and so had granted the request. The documents to which the Tribunal were referred consisted of the agreed bundle as prepared by HMRC in electronic form. The hearing was held in public.

DECISION

Introduction

1. The Appellant used to run licensed premises, The Pride of Tottenham, at 614 Tottenham High Road, London N17. At the time he was registered for VAT as a sole proprietor. This appeal concerns the refusal of HMRC to allow amounts of VAT claimed by the Appellant as input tax on rent. HMRC's decision is dated 21 January 2019 and was reviewed (and maintained) on 6 March 2019. The Appellant appealed to the Tribunal on 29 March 2019. The claims under appeal are as follows:

VAT period	Input claim reduction £	Input tax allowed £	VAT period	Input claim reduction £	Input tax allowed £
02/15	1300	Nil	08/16	1300	Nil
05/15	1300	Nil	11/16	1300	Nil
08/15	1300	Nil	02/17	1300	Nil
11/15	1300	Nil	05/17	1300	Nil
02/16	1300	Nil	08/17	1300	Nil
05/16	1300	Nil	11/17	4923	Nil

The central issue

2. The issue for the Tribunal was whether the Appellant was entitled to recover the above VAT claims as input tax. The Appellant bears the burden of proving that he has such an entitlement, to the civil standard of the balance of probabilities.

The law

3. The relevant legislation, the Value Added Tax Act 1994 ("VATA 1994") and the related regulations, is extensive and is set out as an appendix to this decision.

The hearing

4. As noted above, the Appellant failed to attend the hearing. As requested by him, arrangements were made by the Tribunal for him to attend at the Birmingham Employment Tribunal where he would be connected to the video link for the hearing. A clerk was designated to assist him. The Appellant failed to attend and made no contact with the Tribunal. The mobile telephone number he had given was inoperative. After allowing a period of grace, the Tribunal decided that it was fair and just to proceed with the hearing in his absence. (There was still no sign of the Appellant nor any communication from him by the conclusion of the hearing.)

The Appellant's case

5. The Appellant's main contention as set out in his Notice of Appeal dated 29 March 2019 was that he was entitled to claim VAT on rent as input tax. He said that the lease for the property was originally established in the names of his wife and himself, but the lease as signed was in his wife's sole name. Later the Appellant said it was agreed that the lease would be in their joint names. His wife also had permission to sublet to him. HMRC had acted inconsistently. He had paid the VAT due from him to HMRC and wanted repayment of the input VAT.

The Respondent's case

6. HMRC contended in summary that the rent claimed as input tax by the Appellant had not in fact been paid by him. There had been no taxable supply to him. The Appellant had registered for VAT with effect from 16 December 2012, as a sole proprietor. The Appellant had challenged the form of registration in 2013 but had not pursued a change, so the sole proprietor registration stood. On 12 February 2018 the Appellant had submitted VAT returns for the periods set out in the table at [1], above. An investigation had followed and the claims were disallowed for want of evidence.

Evidence

7. A bundle of copy documents was served prior to the hearing by HMRC, incorporating all the Appellant's documents, together with relevant authorities and legislation. The Tribunal will refer to specific documents as necessary below.

8. Mr Colin McDonald ("Mr McDonald"), HMRC officer, gave evidence on behalf of HMRC, in accordance with his witness statement dated 16 April 2020, which stood as his evidence in chief. In summary Mr McDonald described the course of examining the multiple VAT input tax (repayment) claims which the Appellant submitted on or about 12 February 2018, covering four years. He had explained to the Appellant that the evidence the Appellant had provided in support of the claims was defective. The Appellant had not shown that a taxable supply had been made to him by the landlord of 614 Tottenham High Road. The Appellant did not hold the lease, which was in his wife's name. She paid the rent from her bank account. She was not a taxable person for VAT purposes. Nor was there evidence of a business partnership between the Appellant and his wife. The claims had therefore been disallowed.

Submissions

9. Mr Hume for HMRC relied on HMRC's Statement of Case, which has been summarised briefly above. The landlord of 614 Tottenham High Road had exercised the option to tax and the VAT invoices were issued to the tenant, the Appellant's wife, not to the Appellant. The supply in question had not been made to a taxable person. The appeal could not succeed.

Discussion

10. The Tribunal accepts HMRC's submissions. It is clear from Mr McDonald's evidence that he gave the Appellant every consideration when examining the multiple VAT input claims which had been made late as a group. There were a number of visits to the Appellant as well as extensive correspondence with the Appellant's representative. It was carefully explained to the Appellant what evidence was needed to support his claim. Time was given to the Appellant to gather evidence. The Appellant had access to professional advice. All of the documents produced by the Appellant were included in the trial bundle and were studied by the Tribunal with care.

11. Far from supporting the Appellant's case, the documents unfortunately tend to contradict his claims. No lease was produced for the property in his own name, either solely or jointly with his wife. The rent demands produced are addressed to the Appellant's wife. No bank statements were provided showing payment of any rent by the Appellant. There are no VAT invoices for rent addressed to the Appellant. There was no partnership business between the Appellant and his wife registered for VAT, nor any partnership agreement between them produced. There may have been discussions at various times about changing or implementing these various proposed arrangements, but nothing was ever reduced to completed, formal documents. They remained discussions, not binding legal agreements. The Tribunal so finds.

12. Taking all of available evidence into account, the Tribunal finds that the Appellant has been unable to show that that he was entitled to claim input tax on any of the 12 claims he belatedly made. His appeal must be dismissed.

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.

TRIBUNAL JUDGE MANUELL
RELEASE DATE: 22 October 2021

APPENDIX

Relevant legislation – VATA 1994 and the VAT Regulations 1995

Section 3 defines a taxable person for the purposes of VAT as being a person who is required to be registered for VAT.

Section 4 determines that VAT is chargeable on a supply of goods or services made in the UK where it is a taxable supply made by a taxable person.

Section 24(1) provides the definition of “input tax” as being VAT incurred on goods or services used or to be used in the making of taxable supplies by a taxable person.

Section 24(6) allows HMRC to specify that evidence has to be supplied to support any claim for input tax.

Section 25(2) determines that a taxable person may be entitled to credit for input tax and that it may be deducted from output tax that is due.

Section 25 (3) defines a “VAT credit” as being an amount due where either no output tax was due at the end of the period or if the amount of credit exceeds the output tax due.

Section 25(6) determines that a claim may not be paid except if it is made in such a manner and time as subject to conditions as specified by HMRC.

Section 26 allows for input tax to be claimed where a taxable person has incurred the input tax in the course or furtherance of the making of taxable supplies in the UK.

Section 31 determines when a supply can be exempt from VAT.

Section 73(1) allows an assessment to be raised where HMRC consider the VAT return to be incomplete or incorrect.

Section 73(6) determines the time limits for the making of an assessment as being not later than either two years after the end of the prescribed accounting period or one year after the evidence of facts, sufficient in HMRC’s opinion to make the assessment.

Section 77(1) determines that the time limit for issuing an assessment is four years after the end of the VAT Return period.

Section 83 specifies which matters can be appealed to Tribunal.

Schedule 1 sets out the requirement to be VAT registered.

Group 1 Schedule 9 sets out exempt supplies of land and buildings.

Part 1 Schedule 10 provides an overview of an option to tax on land and buildings.

Regulation 14, the VAT Regulations 1995, sets out the required content of a VAT invoice.

Regulation 25 sets out the requirement to submit VAT returns.

Regulation 29 sets out the conditions relating to the claiming of input tax, and allows HMRC to request further evidence to support any claim for input tax.

Regulation 31 sets out the requirement for every taxable person to keep business records.

Regulation 32 sets out the requirement to maintain a VAT account.

Regulation 40 sets out VAT to be accounted for on returns and payment of VAT.