Neutral Citation: [2023] UKFTT 00079 (TC)

Case Number: TC08712

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2019/05892

VAT – zero-rating – evidence of export – HMRC's erroneous view of the 3 month period set out in paragraph 3.5 of VAT Notice 703 – Arkeley followed – appeal allowed

Heard on: 13 January 2023
Judgment date: 25 January 2023

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR JULIAN SIMS

Between

PAVAN TRADING LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: David Bedenham of counsel instructed by Vincent Curley & Co

For the Respondents: Philip Mackley litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an appeal brought by Pavan Trading Limited ("**PTL**" or "**the appellant**") against HMRC's decision to raise a VAT Assessment for £70,652.00 on 14 May 2019 ("**the assessment**") under Section 73 of the VAT Act 1994 ("**VATA**").

2. The Assessment covers two periods, broken down as follows:

Assessment Period Ended	Period Ended for Sales Invoices	Total of Disallowed Invoices	Amount Assessed
31 December 2018 (12/18)	30 September 2018	£26,092.82	£26,092.00
31 January 2019 **(**01/19)	31 October 2018	£44,560.12	£44,560.00
		Total Assessment	£70,652.00

3. The appellant's business consists of:

(1) The operation of a sub post-office and associated retail outlet; and

(2) the making of wholesale supplies of derma fillers, beauty products and orthopaedic products.

4. At all material times, the appellant was VAT registered and was permitted by HMRC to submit monthly VAT returns.

5. This appeal relates solely to the wholesale aspect of the appellant's business, and more specifically to certain wholesale supplies made to customers ("**US customers**") in the United States ("**US**") in September and October 2018.

6. The assessment was raised as PTL failed to provide 'Evidence of Export' or provide it within the 3-month time limit for those supplies to the US customers. For that reason HMRC have disallowed the zero-rating of those supplies.

THE LAW

Legislation

7. Section 30(6) VATA 1994 provides that a supply of goods is zero-rated:

> "…if the Commissioners are satisfied that the person supplying the goods –
>
> (a) Has exported them to a place outside the Member States…
>
> and …if such other conditions, if any, as may be specified in regulations or the Commissioners may impose are satisfied".

8. Regulation 129 of the VAT Regulations 1995 provides in relevant part:

> "Where the Commissioners are satisfied that –

(a) goods intended for export to a place outside the member states have been supplied to:

i. a person not resident in the United Kingdom;

ii. a trader who has no business establishment in the United Kingdom from which taxable supplies are made;…

…and

(b) the goods were exported to a place outside the member states,

the supply, subject to such conditions as they may impose, shall be zero-rated".

9. VAT Notice 703 (certain parts of which have force of law) ("**Notice 703**") sets out further conditions for the zero-rating of dispatches.

10. Paragraph 3.3 of Notice 703 provides in material part:

"A supply of goods sent to a destination outside the EC are liable to the zero-rate where you:

- Make sure that the goods are exported from the EC within the specified time limit (see paragraph 3.5)
- Obtain official or commercial evidence of export as appropriate (see paragraphs 6.2 and 6.3) within the specified time limits
- Keep supplementary evidence of the export transaction (see paragraph 6.4), and
- Comply with the law and conditions of this notice"

These 4 bullet points have the force of law.

11. Paragraph 3.5 of Notice 703 (which has force of law) specifies that the time limit for exporting the goods and for obtaining the relevant evidence is in each case three months from the time of the supply.

12. Paragraph 6.1 of Notice 703 sets out the evidence that is required for a supply of exported goods to be zero-rated for VAT:

"For VAT zero rating purposes you must produce official evidence as described in paragraph 6.2 and/or commercial evidence as described in paragraph 6.3 (both have equal weight). These must be supported by supplementary evidence to show that a transaction has taken place, and that the transaction relates to the goods physically exported. If the evidence of export provided is found to be unsatisfactory, VAT zero rating will not be allowed and the supplier of the goods will be liable to account for the VAT due (see paragraph 11.2)".

13. Paragraphs 6.2 and 6.3 of Notice 703 (which do not have force of law) give examples of official evidence and commercial transport evidence.

14. Paragraph 6.4 of Notice 703 sets out what supplementary evidence is available to support the claim, stating that the trader is "likely to hold, within your accounting system some or all of the following"

- customer's order
- sales contract
- inter-company correspondence
- copy of export sales invoice
- advice note
- consignment note
- packing list
- insurance and freight charges documentation
- evidence of payment or evidence of the receipt of the goods abroad. You must hold sufficient evidence to prove that a transaction has taken place, though it will probably not be necessary for you to hold all of the items listed.

15. Paragraph 6.5 of Notice 703 sets out what must be shown on export evidence in the following terms:

> "An accurate description of goods, quantities are required, for example '2000 mobile phones (Make ABC and Model Number XYZ2000)'.
>
> Vague descriptions of goods, quantities or values are not acceptable. For instance, 'phones' or 'various electrical goods'.
>
> An accurate value must be given and not excluded or replaced by a lower or higher amount.
>
> If the evidence is found to be unsatisfactory you as the supplier will become liable for the VAT due.
>
> The rest of this paragraph has the force of law.
>
> The evidence you obtain as proof of export, whether official or commercial, or supporting must clearly identify:
>
> (1) the supplier
>
> (2) the consignor (where different from the supplier)
>
> (3) the customer
>
> (4) the goods
>
> (5) an accurate value

(6) the export destination, and

(7) the mode of transport and route of the export movement".

16. Paragraph 7.5 (which does not have force of law) states that "Goods exported by post may be zero-rated if they are direct exports and you hold the necessary evidence of posting to an address outside the EC". Under sub-heading (b) (addressing "evidence of posting for parcels") reference is made to use of Parcelforce Worldwide and the customs declarations that will be made.

Case law

17. The Upper Tribunal decision in *HMRC v Arkeley Ltd (in Liquidation)* [2013] UKUT 0393 (TC) ("***Arkeley***") is very relevant to this appeal.

18. At paragraph 13 of *Arkeley*, the Upper Tribunal observed:

> "the required evidence [under paragraph 6.5] may be provided from a number of sources. The evidence may be official (that category is not relevant to this case), or it may be commercial or supporting".

19. At paragraph 39, the Upper Tribunal went on to state:

> "…there is no requirement that the matters required by para 6.5 to be clearly identified should be in any particular document or should all be in the official or commercial documentation. All the documentation obtained within the relevant time limit, including supporting documentation, should be considered in determining whether, taken as a whole, those matters have been so identified,"

20. And at paragraph [22]*:*

> "…in a case where bad faith is not alleged, and where it is not argued that the taxable person was a participant in fraud, whether an actual participant or a participant by virtue of knowledge or means of knowledge of the fraud (see *Kittel v Belgium*, *Belgium v Recolta Recycling SPRL* (Joined cases C40 439/04 and C440/04) [2008] STC 1537; referred to at [65] of the CJEU judgment), the only question is whether the documents received by the supplier are sufficient evidence of the export. That is the case whether or not the tax authority has itself accepted the evidence. If that evidence is sufficient, and that is a matter for the Tribunal in the case of dispute, the application of zero-rating will not be precluded even if it is later discovered that the goods have not been exported".

FACTS

21. We were provided with a substantial bundle of documents. Oral Evidence for HMRC was given by officer Rosalie Bains ("**Officer Bains**") who tendered a witness statement on which she was cross examined. Oral evidence on behalf of PTL was given by Mr Jatinder Singh, ("**Mr Singh**") a director and shareholder of PTL, who tendered two witness statements on which he was cross examined. From this evidence, we find as follows:

Background

(1) The assessment relates to exports supplied under 13 invoices which took place in September and October 2018. These exports were made to two US customers, namely Infinity Medical Supplies Inc ("**Infinity**") and Fair Chill Supplies ("**Fair Chill**"). According to HMRC's pre assessment letter, all of the supplies were made to Fair Chill, but it became apparent during the hearing that this was not the case and that a number of the supplies had been made to Infinity. However, nothing turns on this. Both Infinity and Fair Chill are run by an American, Mr Sam Brar.

(2) These exports were of goods comprising orthopaedic syringes and aesthetic fillers which, in the US, are described under the generic trade term "RX Medical Products" ("**the goods**").

(3) In order to supply these to a US customer, the appellant needed a licence to comply with the rules of the Federal Drugs Agency. Accordingly the appellant took the appropriate professional advice in the US to obtain the relevant licences.

(4) The appellant was advised that each packet of the goods had to contain a US version of an information sheet about the goods, within each parcel. Stickers also had to be attached to each packet which had "RX Only", on them, and they had to be labelled correctly with the appropriate barcode which included the commodity code for that product together with a product lot number.

(5) The appellant purchased the goods from FCL Health Solutions Ltd ("**FCL**"), a business based in Birmingham which dealt with pharmaceuticals and other medical goods and devices.

(6) In order to ensure that the goods complied with the US regulatory requirements, the appellant needed to unpack them, once they were received from FCL, and repack them having extracted the EU information sheets, and then inserted the US information sheet into, and relevant barcode onto, the packets.

(7) This was usually done by Mr Singh, or his nephew under Mr Singh's authority. There were usually three or four syringes in each packet, and the goods were exported in numbers of anything up to 50 packets per parcel. If an order was for more than 50 packets they would be packaged into more than one parcel.

(8) Mr Singh made out a commercial sales invoice for each parcel, placed it in a plastic wallet, and attached it to the outside of each parcel. The invoices were also emailed to the US customers. All of the invoices were denominated in euros. The appellant has a euro account for all purchases and sales, and thus buying in euros and selling in euros meant that the appellant took no exchange rate risk.

(9) The wholesale business was run from Mr Singh's private home, which was where the unpacking and repacking took place. Once that repacking had taken place, he took each parcel to his brother's post office. He completed a form CP72 for each parcel, which is the customs declaration that has to be attached to every parcel sent to the US. These are carbonated forms. The top copy and first carbonated copy were attached to the parcel with the second carbonated copy held by the appellant.

(10) Since each shipment might include a number of parcels and therefore required a number of CP72's, Mr Singh or his nephew would batch up the CP72's and the Post Office receipts, and staple them together, writing on the back of the top copy the number of packets in each

parcel (for example, 6×40 x Euflexxa). This enabled the appellant to identify the parcels with the packets in each parcel and thus with the corresponding invoice.

(11) The goods were exported by post via the Post Office, and the appellant obtained a certificate of posting for each parcel. He was able to track the parcels through the Post Office tracking system. Once posted, the appellant then updated its sales ledger which Mr Singh maintained on his iPhone. All invoices, both sales and purchases, and bank statements, were sent to his accountant who completed the financial records including compiling a sales daybook (in both euros and sterling after conversion).

(12) Payments were made by bank transfer in euros to the appellant's euro bank account at NatWest Bank. The appellant had agreed a rolling credit arrangement with the US customers, who made regular payments to cover the invoices issued. Once payment was received, the appellant updated its sales ledger. The payments covered more than one invoice. At certain times the customer might have been in credit, and other times in debit.

HMRC's intervention

(13) HMRC visited the appellant's premises on 12 October 2018 to discuss the appellant's wholesale business, and to inspect the appellant's VAT records. At the visit, Mr Singh explained the basis on which the appellant bought the goods from FCL, and exported them to the US customers. On the same date the appellant sent to HMRC NatWest Bank statements for its international account covering the period 1 September 2018 to 30 September 2018.

(14) On 22 October 2018, the appellant sent to HMRC five sales documents relating to exports in September 2018.

(15) Officer Bains sent an email to the appellant on 30 November 2018 querying the exports. Following a reply on 11 December 2018, a further email was sent to the appellant by another HMRC officer with further supply queries. HMRC were clearly dissatisfied with these responses, and on 18 December 2018 issued an extended verification letter for November 2018.

(16) On 5 February 2019 HMRC issued a pre assessment letter dealing with the invoices and exports in September, October, and November 2018. That letter explained that HMRC were intending to issue assessments for those periods.

(17) The assessments were then issued, and following a request for a review, HMRC issued a review conclusion letter on 7 August 2019 which upheld the decision to disallow zero rating of the goods and upholding the assessment. The appellant subsequently appealed against this decision to the Tribunal on 3 September 2019.

The 13 exports

(18) Amongst the documents in the bundle were 13 "deal packs". The parties had very sensibly identified the relevant documents for each of the 13 deals, and separated them out into distinct sections. The parties had agreed that each of these packs were largely identical for the 13 deals. We were also taken to documents elsewhere in the documents bundle which were relevant to the deals. Mr Bedenham took us through the relevant documents for invoice numbered 10051.

(19) A purchase invoice dated 13 September 2018 from FCL shows that 250 Euflexxa 3×2 ml syringes, at a unit price of €200, was sold to the appellant by FCL. The total excluding VAT was €50,000 with VAT of an additional €10,000.

(20) A purchase order from Fair Chill dated 12 September 2018 for 250 Euflexxa for a total amount of €50,375. Those goods were to be both billed and shipped to an address at Elk Grove, California.

(21) A sales invoice from the appellant made out to Fair Chill, dated 12 September 2018. The goods are described as Euflexxa 3x2 ml SYRG. The quantity is 250 and the unit price is €201.50. The total price on the invoice is €50,375. The invoice declares that the goods were both sold to, and shipped to, Fair Chill at its California address.

(22) Seven CP72 forms with seven tracking numbers together with the associated Post Office receipts. The CP72's are in common form. The name and address of the sender is the initials JSPT not that appellant's name in full. The address is Mr Singh's home address. The name and address of the addressee is given as George Singh at an address in Sacramento. The goods are described as 1 RX medical supplies with a unit value of £1.

(23) Tracking records for each of these seven parcels. The tracking record for parcel number ending 745 GB shows that it arrived in the destination country on 4 October 2018 and at the delivery depot in the US on 13 October 2018. It was delivered and signed for by S Singh on 13 October 2018.

(24) Further evidence which was provided in respect of this transaction but not included in the deal pack, included: The appellant's purchase daybook which records the acquisition on 13 September 2018 from FCL; the appellant's sales daybook which records the sale, against the sales invoice, for 12 September 2018 and includes the sales price in euros as well as its sterling equivalent (£44,899.24); the summary of the rolling credit account with the US customers which shows that, at the time at which invoice 10051 was issued, the US customers owed the appellant €36,571.44 but that payments of €30,446.96 and €85,389.04 were made on 13 September 2018 and 20 September 2018 respectively; a copy of the appellant's euro bank account showing the receipt on 13 September 2018 of €30,446.96 and a further receipt on 20 September 2018 of €85,389.04.

(25) Finally, we were shown a copy of a letter from Mr Sam Brar to Mr Singh relating to shipment instructions. It records that the two had met in the UK in August 2017 when they had discussed many aspects of the business and one of the things that they had agreed was for the appellant to ship product to addresses in Galt California and Sacramento California.

(26) It was Mr Singh's unchallenged evidence that this reflected an earlier conversation which predated the 2018 invoices. This is borne out by the terms of the letter which states that this was the agreement reached by Mr Singh and Mr Brar when they met in 2017. We find that as a fact.

(27) It was also his evidence that the reason that the unit value was identified as being £1 on the CP72's is to prevent theft. His experience as a postmaster has taught him that if a CP72 identifies a high unit value, there is an increasing likelihood that the goods attached to that form will be stolen.

Officer Bains

(28) Officer Bains who gave evidence about the background to the HMRC intervention and the reasons why zero rating was denied, provided reasons for that denial. There was no evidence of payment by the US customers; the goods were delivered to an address that was not the customers' principal place of business; supplier information was incomplete and disagreed with

information held by HMRC; nor did it agree with customer information given on the sales invoices; the values stated on each parcel was significantly below the sales invoice value; goods were described as medical supplies which is inaccurate and incorrect quantities were given.

(29) It is also clear from her witness statement and her oral evidence that in her view the requirement to obtain the relevant evidence of export, namely 3 months from the date of supply, is the time within which the taxpayer must provide the evidence to HMRC. She did not think that it was the time within which the appellant must have the evidence in its possession.

(30) She accepted that if HMRC had received the evidence which Mr Singh claims to have had and which is detailed at [21(19)-(25)] above, within that 3 month period, HMRC would have accepted it as valid evidence of export and it would have been enough for the supplies to have been zero rated.

Mr Singh's evidence

(31) Mr Singh's unchallenged evidence was that he was in possession of that full suite of documents for all 13 transactions within 3 months of the relevant supplies. He was in possession of CP72's, Post Office receipts, invoices, bank statements, daybooks etc. We find as a fact that this was the case.

(32) The CP72's for transactions 10 and 12 had been mislaid when they were being sent to and from HMRC. But we find as a fact that he had them in his possession within that relevant 3 month period. This was his unchallenged evidence.

(33) He had originally entered the US customers main business addresses on the sales invoices and not the two delivery addresses. But following HMRC's intervention, he issued new invoices to the US customers with the relevant delivery addresses thereon.

DISCUSSION

Our role and burden of proof

22. There seemed to be some confusion in the ranks of HMRC regarding our role, jurisdiction, and whether we can determine this appeal or whether it is for the appellant to take some further corrective action in light of the evidence which we have heard. This is plainly incorrect. This is an appeal brought by the appellant pursuant to section 80 VATA. We have to decide, on the evidence before us, whether that appeal succeeds. The appeal is against the assessments. There is no need for the appellant to do anything further. Not only is this clear as a matter of law, but it is also endorsed at paragraph [22] of *Arkeley*.

23. The burden of showing that the assessment is incorrect lies with the appellant, and the standard of proof is the conventional civil standard of proof, namely the balance of probabilities.

Submissions

24. In summary Mr Mackley submitted as follows:

(1) He repeated the reasons given by Officer Bains for denying zero rating.

(2) He said that legible copies of the relevant documentation had not been provided to HMRC within 3 months from the date of export.

(3) The information on the invoices and the information on the CP72's was not supplementary of each other but conflicted. The address on those forms was different from the address on the invoices, and that wasn't supplementary information, they directly conflicted. The same is true of the values which are given as £1 on the CP72's is but varying amounts on the invoices.

(4) The appellant has not been able to show that the goods listed on the evidence of supply/delivery match the goods physically exported.

(5) The letter from Sam Brar asking the appellant to ship the goods to the California addresses clearly post dates the 3 month period from the date of supply.

(6) The invoices are not valid since they are denominated in euros and there is no exchange rate into sterling provided on the face of the invoices themselves. Furthermore, it is not possible to cross-reference the receipts in the appellant's bank account with the invoices.

25. In summary, Mr Bedenham submitted as follows:

(1) HMRC have made two errors of law. The first is that the 3 month period for obtaining evidence of export does not mean that the taxpayer has to have provided that evidence to HMRC within 3 months from the time of supply. It simply means that the taxpayer has to have that evidence in its possession in that period.

(2) The second error is that they have ignored the principles set out in *Arkeley* which show that the export evidence does not need to be in a particular document or indeed in the official or commercial documents. Provided evidence of export is clear from all of the documents, taken as a whole, that is satisfactory. HMRC seem to think that the information has to be in the CP72's only.

(3) Mr Singh's unchallenged evidence is that he had in his possession all of the relevant evidence within 3 months from the date of export. He had been told by Sam Brar to ship the goods to the distribution hubs set out in the letter during a conversation they had had well before the date of that letter.

(4) The goods were actually shipped to the US.

(5) There is no contradiction in the values. The correct values are set out in the invoices and indeed these are the values which had been used in the VAT returns and in the assessment. HMRC themselves therefore have not been confused.

(6) Even if the VAT invoices do not correspond absolutely with the relevant regulations, they are still supplementary evidence of export. It was Mr Singh's unchallenged evidence that the CP72's were batched up and on the back of the top one his nephew had identified the number of items in each parcel shipped.

(7) There is no legal requirement to provide any ship from address, so the fact that the CP 72's identify Mr Singh's private address is neither here nor there.

(8) The tracking information referred to the recipient as George Singh at the postal hub address. HMRC say that this doesn't identify the customer. But this falls into the *Arkeley* trap. It is clear from the invoices and other documents that the customer is either Fair Chill or Infinity.

The 3 month period

26. It is clear from Officer Bains' evidence, as well as HMRC's statement of case and Mr Mackley's skeleton argument and his oral submissions, that HMRC's view of the law is that the evidence of export must be provided to HMRC within 3 months from the date of supply.

27. Furthermore, the review letter suggests there is an alternative criterion, namely "whether that evidence was available within 3 months of the goods being exported". It goes on to justify the making of the assessment on the basis that the evidence of export was not easily available "and thus held by you within the 3 month's time limit". It goes on to note that HMRC's VAT manual on record-keeping requirements says that a business must be able to satisfy HMRC that the records are readily available, and it is critical that HMRC sees the evidence within a reasonable period of time of asking for it (and a reasonable time to obtain evidence is likely to be between "2-3 weeks of your request"). It then says that the assessments were properly made because the caseworker had provided the appellant with sufficient opportunity to provide evidence of zero rating.

28. We can see no legislative basis for this alternative criterion, nor for this justification for upholding the assessment.

29. Given that the crucial word in section 3.5 of Notice 703, which has the force of law says "obtain", we found these curious submissions, as did Mr Bedenham. His view, as was ours, was that this simply meant that the taxpayer had to have obtained and have in his possession valid evidence of export within the 3 months from the time of supply. This enables a taxpayer to obtain the information if it is using an independent exporter (not the situation in this case where the appellant exported the goods itself via the Post Office).

30. Having questioned Mr Mackley on the point before lunch, he came back after lunch and accepted that the 3 month period was indeed the period within which the appellant had to have the relevant evidence in its possession and not the period within which it had to disclose the evidence to HMRC.

31. This meant that one of the fundamental grounds for HMRC's justification for denying zero rating melted away. Somewhat oddly, even after this admission, Mr Mackley still sought to support the decision for failing to grant zero rating on the basis that the information had been provided to HMRC after that 3 month period. However, this is plainly wrong.

Discussion

32. We are bound by *Arkeley*. It is abundantly clear from that decision that we must consider all the documentation which was in the appellant's possession within 3 months from the time of supply. It is Mr Singh's unchallenged evidence that the documentation set out at [21 (18-25)] above was in the appellant's possession within that period in respect of all of the exports which are the subject of this appeal.

33. We therefore need to review those documents in light of the statutory criteria for evidence of export set out at paragraph 6.5 of Notice 703, which has the force of law.

34. The evidence may be official or commercial, or supporting, and must clearly identify:

(1) The supplier. This is the appellant, and this can clearly be seen from the sales invoices.

(2) The consignor (where different from the supplier). This does not apply since the supplier and consignor are the same person.

(3) The customer. This is either Fair Chill or Infinity, and can clearly be seen from the sales invoices.

(4) The goods. These can clearly be identified from the sales invoices.

(5) An accurate value. These can clearly be identified from the sales invoices.

(6) The export destination. These can clearly be identified from the CP72's, the tracking information, and the Post Office receipts.

(7) The mode of transport and routing of the export movement. The mode of transport can clearly be seen from the Post Office receipts. To the extent that the "route" is relevant when goods are sent by post, then the tracking information shows the location of the goods at the various stages of its removal from the UK and its arrival in the US.

35. The information set out in the sales invoices, the CP72's and the Post Office receipts and tracking information fulfils the paragraph 6.5 statutory requirements.

36. There is no need, therefore, for the appellant to go any further and provide us with additional evidence of export. Nor, in truth, was there any need for it to do so as regards HMRC. The foregoing should have been adequate to enable HMRC to have agreed that the goods could be zero rated.

37. But the appellant has got a great deal further both with us and with HMRC. It has provided a complete audit trail from the acquisition of the goods through to their receipt by the US customers. This includes evidence of payment.

38. We are at something of a loss to understand why HMRC did not accept all of this evidence as satisfactory evidence of export. It is clear that one crucial reason was their fundamental misinterpretation of the 3 month period set out at paragraph 3.5 of Notice 703. They then compounded this error by misinterpreting (or more probably, overlooking) the principle set out in *Arkeley*.

39. They suggest that the information in the various documents is contradictory, certainly as regards destinations, descriptions of the goods and values. We couldn't disagree more. It seems plain that the export destinations i.e. the destinations to which the goods are actually shipped in the US, are set out in the CP72's. The identity of the customers is set out in the sales invoices where their principal place of business is also identified. There is no contradiction here. One is the actual place of shipment, the other is the place from which the customer treats itself as based, or is carrying on its business.

40. The description of the goods is not vague. The description set out in the export documentation clearly conforms with the US regulatory requirements. The specific goods are clearly identified on the sales invoices.

41. Nor can we see any contradiction between the values (or real price) set out in the sales invoices and the sum of £1 set out in the CP72's. It is absolutely clear that the real price has been used by the appellant when completing its VAT returns, and HMRC have clearly not been confused since they have used that number when assessing. This is the case whether or not

there was a good reason (which reason we fully understand) for the difference between the two documents.

42. Whilst the CP72's might identify the sender as JSPT, which it seems to us is Mr Singh's initials followed by shorthand for the appellant, any such semantic deficiency is more than compensated for by the clear identity of the supplier set out in the sales invoices. Furthermore, as Mr Beddenham points out, there is no statutory requirement under paragraph 6.5 for the CP 72 (or indeed for any document) to identify the address of the supplier. Whilst that might go to "clearly identify[ing]" the supplier, it is not, in itself, a requirement.

43. It took Mr Beddenham approximately five minutes to take us through the rolling account arrangements between the appellant and the US customers, and the way in which the latter would settle its ongoing liabilities for payment regarding outstanding invoices. It took a further five minutes (admittedly only in respect of one of the 13 deals) to demonstrate how the sums identified on the rolling account were received in the appellant's bank account. We cannot understand, therefore, HMRC's submission that this was not possible for them to do, nor that one of the reasons for this was that the transactions took place in euros. The reason for this is wholly understandable, namely to ensure that the appellant faced no exchange risk (something which seemed to be beyond the understanding of Officer Bains). But, frankly, we have absolutely no difficulty in reconciling the payments into the rolling account with the receipts in the appellant's bank account.

44. And we would also observe that there is no statutory requirement for the appellant to provide this information, and so for HMRC to deny export rating on the basis they couldn't understand how the numbers tied up, is something which we are at a loss to explain.

45. Similarly, there is no statutory requirement for an exporter to verify its purchases. It simply has to provide evidence of export. Yet the appellant in this case has provided evidence of its acquisitions, not just to us but also to HMRC. And HMRC have started to pick holes in that evidence (wholly wrongly, in our view). There seems little doubt that the goods were actually acquired and actually exported. And HMRC appeared to accept this, and oppose zero rating only on the basis of inadequate documentary evidence. So we cannot understand, either, why they were at such pains to submit that there were documentary inadequacies on the purchase side of the transactions. These are, frankly, irrelevant as regards export evidence, and in any event, there is no justification whatsoever in HMRC's suggested inadequacies.

46. The appellant, in response to HMRC's intervention, rejigged his sales invoices to identify the shipping address on them rather than the principal place of business for the US customers. But we do not believe that this was required in order to satisfy the paragraph 6.5 criteria. The identity of the customer is clearly set out in the sales invoices and there is no need for the shipping address on the CP72's to correspond with the customer's address. As set out above, provided as is the case, that the export destination, and the identity of the customer are clear from the suite of documents in the appellant's possession at the relevant time, there is no need for that information to be in the same document. Again, HMRC have misconstrued *Arkeley*.

47. Finally, it is telling that Officer Bains accepted that had the information which was presented to us been provided to her within 3 months from the date of supply, she would have decided that the export of the goods should be zero rated.

48. So it seems to us the only reason that the appellant has had to bring an appeal was based on an erroneous view of the law set out in HMRC's own Notice 703 (as well as either overlooking or misconstruing the principles in *Arkeley*). This error was started by Officer Bains,

perpetuated by the nonsense written by the review officer, and then compounded by HMRC's statement of case and skeleton argument.

49. If there was ever a counsel of perfection for the provision of export documentation, then this appellant has achieved it.

50. Accordingly, we have absolutely no hesitation in allowing this appeal. To our mind the appellant has more than adequately demonstrated that within the 3 month period set out in paragraph 3.5 of Notice 703, it held all of the evidence of proof of export of the goods, as is required by paragraph 6.5 of Notice 703, in all of the 13 transactions which are the subject of the assessment.

DECISION

51. We allow this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

52. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 25 JANAURY 2023