[2017] UKFTT 0336 (TC)

TC05813

Appeal number: TC/2016/03077

VAT – MOT test fees – invoices not identifying MOT charge as a separate amount –customers all aware that appellant not authorised garage-whether whole sum liable to standard rate-no-appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ELLON CAR CLINIC LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at Aberdeen on Thursday 13 April 2017

Angela Stott for the Appellant

Mark Boyle, Officer of HMRC, for the Respondents

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DECISION

Introduction

1. The disputed decision of the respondents ("HMRC") is the decision dated 4 February 2016 to issue assessments for the periods 04/14 to 07/15 inclusive in a total sum of £3,847. Those assessments arise in part from HMRC's contention that the appellant has incorrectly accounted for VAT on the charges for MOT tests.

2. In addition, although, understandably, the appellant has signed the Notice of Penalty Suspension for a penalty totalling £577.05, that penalty too forms part of this appeal since it relates to the treatment of MOT charges.

3. The parties asked me to make a finding in principle in relation to the VAT treatment of the charges for MOT tests. They were agreed that the input tax included in the assessment of £80.61 was correct.

The Factual background

4. The appellant repairs and services cars but in the relevant period was not an authorised MOT garage and continued its MOT work by using the services of an approved MOT test centre. Customers were invoiced as if the appellant were still an authorised garage. The MOT charge is not disclosed as a separate amount on the sales invoice.

5. The appellant had taken over the business on 1 January 2014 and prior to which date the business had been an approved MOT testing station. That ceased in March 2014 whilst the appellant sought authorisation. It has again become an approved testing station with effect from 23 December 2015.

6. The appellant is based in the centre of town where customers find it convenient to drop off their cars on the way to work and collect them either in the evening on the way home or on the following days.

7. Customers booked an MOT either by telephone or in person. Since the appellant had to arrange for other garages to do the actual MOT they were unable to take "walk in" or immediate bookings. All customers were told that the appellant had to arrange for the MOT to be done elsewhere and that therefore they could not simply wait whilst it was being done.

8. The appellant advertised the fact that they were the cheapest garage in the area for MOTs. There was an advertisement on the front of the building in big letters. An MOT cost £49.95. The appellant had an arrangement with a number of garages in the area and the cost to the appellant of an MOT ranged between £40 and £54.85. Obviously the appellant made a loss on some of the MOTs.

9. The appellant was prepared to sustain the loss partly because they had optimistically, but erroneously, thought that the period when they were not an

authorised MOT garage would be very short and they wished to retain the customer base.

10. When the car was delivered to the appellant the customer was told that the appellant would call them when the results of the MOT were known. The appellant then delivered the car to the other garage. If the MOT test required work to be done the appellant would collect the car, inform the customer and when authorised do the necessary repairs and then arrange the retest. The customer would collect the car by arrangement.

11. Some customers would request a service at the same time. One invoice would be issued and the MOT was not shown separately as a disbursement.

The appellant's grounds of appeal

12. The appellant argues that

> "At the time when we lost our approved MOT testing station status (March 2014) one of our Directors reviewed VAT 700 looking specifically for information relating to garages and did not come across anything with regard to the VAT treatment of MOTs. We are now aware of where this information may be found. However, the date on the documents referenced was January 2015 when our Director checked in March 2014 and this information was not there.
>
> Had this information been available at the time we would not dispute that VAT should have been charged on the element of the MOTs which was in excess of the amounts paid, in most cases, £9.95 but was dependent on the MOT testing station used. We do not agree with VAT being charged on the full price of an MOT of £49.95."

HMRC's argument

13. HMRC argue that the problem for the appellant is that the invoices show only the work done by the appellant and the fact that an MOT test was provided.

14. HMRC's argument in the Statement of Case is quite simply that because the appellant's sales invoices did not identify the MOT charge made by it as a disbursement, Section 1 of Value Added Tax Act 1994 ("VATA") applies and VAT should be charged on the supply of the services, being the services for the full invoiced amount including the MOT.

15. The review decision letter dated 5 May 2016 states blandly that the output tax had been underdeclared in relation to "…the supply of arranging MOTs to be undertaken on behalf of your customers with a third party." HMRC referred to and relied on VAT Notice 700 and Guidance VTAXPER48000.

16. HMRC had not advanced any written argument on whether they viewed the appellant as acting as agent or principal and in regard to what. I raised that obvious issue. It was abundantly clear that, at least until this Hearing, HMRC had not referenced the law and had simply relied on their own VAT Guide, website guidance and manuals. As Mr Boyle very properly conceded none of those have the force of law.

Discussion

17. Certainly since long before 2014 the VAT Notice 700 (The VAT Guide) has included HMRC's view of the proper treatment of MOT fees, that is to say if the fee is accounted for as a discrete disbursement, effectively incurred by the trader as agent for the customer, then the trader can treat the amount of the fee as outside the scope of VAT. If not, then VAT is charged on the whole supply.

18. I was somewhat startled to find that although HMRC produced some very old decisions of the VAT and Duties Tribunal only one of the four more recent cases was in the Bundle, namely *Graeme Duncan t/a G Duncan Motor Services v HMRC*[1] That case was cited in *Jamieson t/a Martin Jamieson Motor Repairs*[2] which in turn was referred to in *Lower and another v HMRC*[3]. The remaining case of interest is *Denton t/a Denton Auto Repairs*[4] which referred to and endorsed the approach taken in the previous two cases.

19. The Tribunals in all four of these cases found in favour of the taxpayer and for not dissimilar reasons. None was appealed. All of the cases looked at the issue of whether the garages in question acted as principal or agent and if as agent as agent for whom.

20. Every appeal turns on its own facts and I am not bound by these decisions but they are of considerable interest. In short, I agree with the exposition of the law in them all.

21. I have no doubt that every customer knew that the appellant itself could not supply an MOT test. Each customer knew that the appellant would have to ferry the car in question to and from the authorised garage, perhaps more than once. I find that the appellant acted as agent for the car owner. The terms of the invoice did not show the involvement of the second garage but the customer did not need to know the identity of that garage but only that an authorised garage would do the test, which they did.

22. Accordingly, I find that the only taxable element of the supply in relation to the MOT tests is, as the appellant stated, the element which exceeds the amount actually paid. In these circumstances the appeal succeeds. Mr Boyle conceded that in those circumstances the penalty falls.

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[1] 2007 UKVAT V20100

[2] 2008 UKVAT V20269

[3] 2008 UKVAT V20567

[4] 2008 UKVAT V20627

23. Lastly, the three cases to which I was not referred made it very clear, occasionally in excoriating terms, that VAT Notice 900 and HMRC guidance were less than a model of clarity or a good exposition of the law. I quote from *Denton* at paragraph 16:

> If we may add a postscript agreeing with the Tribunals in *Jamieson* and *Lower and Lower v HMRC* … Customs guidance is completely unhelpful to people like the Appellant who was doing his best to comply with the law while running a vehicle repair business. … but garages are not interested in understanding fine points of law, and nor should they be required to do so. There is a need for Customs to issue some revised guidance in this area setting out clearly to the public and their officers how garages should avoid the trap of being treated as a principal.

24. The excerpt that was produced to me from HMRC's Internal manual was updated on 26 July 2016 but regrettably describes the "simplified" treatment to be adopted from 1 November 1996 and refers to two Tribunal cases in 1999! I wholeheartedly endorse Dr Avery Jones' recommendation. In that regard the appellant's argument is entirely correct.

25. 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.

ANNE SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 20 APRIL 2017