TC03623

Appeal number: LON/2012/08519

Value Added Tax - Claim that the licence from a marina operator to allow the Appellant to leave his boat for 12 months on the concrete hardstanding adjacent to the marina to enable repairs to be made to the hull and other work to be undertaken, with permission for the Appellant to live on the boat during the works, should have been exempt from VAT - similar claim in relation to the later licence to moor the boat for 6 months on the bank in the marina while further work was undertaken, again with the Appellant living on the boat - claim that the provision of parts for the boat that ranked as a qualifying ship should have been zero-rated – disputes as to the content of HMRC's notices - claims made concerning alleged infringement of Articles 8 and 14 of the Human Rights' Act and the Equality Act 2010 - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

NICHOLAS BROWN

Appellant

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

Respondents

TRIBUNAL: JUDGE HOWARD M. NOWLAN
MS REBECCA NEWNS

Sitting in public at 45 Bedford Square in London on 6 and 7 May 2014

The Appellant in person

Brendan McGurk, counsel, on behalf of the Respondents

DECISION

Introduction

1. This was an Appeal in respect of three VAT issues, the first two being the related issues of whether the Bourne End Marina Ltd ("BEM") should have treated two supplies to the Appellant as exempt supplies, rather than standard-rated supplies. The first was a licence to place his boat on the concrete hardstanding of the marina for 12 months and the second a licence to moor it adjacent to the bank for a further 6 months, with the Appellant always living on the boat. The third issue related to the appropriate VAT treatment of the supply of parts and equipment for the boat, and the issue of whether those supplies should have been standard-rated (as almost certainly they had been) or zero-rated.

2. The Appellant claimed that his various contentions were all supported by his interpretation of the VAT Act 1994. If not, however, it was then contended that there had been breaches of the Human Rights Convention or the terms of the Equality Act 2010, and that either the VAT provisions should be interpreted in conformity with the Convention and the Equality Act, or that we should give some other redress for claimed breaches of his rights.

3. We will make little further reference to this point but it is worth recording that the dispute in question has already come before various courts, including Mr. Justice Sales in the High Court, and that the Appellant had complained that each court has contended that his complaint should more properly be dealt with by some other court or tribunal. We will deal with all the points of substance in our decision though it is fair to observe that the Appellant has again brought his appeal before the wrong court or tribunal for a reason that we will deal with. We had also sought, during the hearing, to deal with matters in a way that might make this particular Appeal the last that would be brought, though for various reasons we fear that we will have failed in that endeavour.

4. Beyond that issue of the multiple hearings that this dispute has occasioned already, it is also worth mentioning that the way in which this Appeal has been conducted has been somewhat influenced by a complaint of unfairness in the VAT legislation in that certain exempt and zero-rated concessions are made in relation to the supply of new build houses, conversions of non-dwellings into dwellings, and the supplies of caravans and houseboats, but no equivalent treatment is accorded to those who live on boats, and whose boats are therefore their "home" and their "residence.

5. We will now deal with the specific matters raised by this Appeal on their merits.

The facts

Background

6. In November 2010 the Appellant acquired, or at least acquired possession of, a boat called the Norseman. The boat had had an interesting history. It had been used until 1920 as a launch on HMS Renown, winched down presumably to enable the captain and crew of HMS Renown to be carried to shore etc. In 1920 it was converted into a recreational sailing yacht. At some date it was equipped with steam power, and in 1950 the steam engine was replaced by a BMC diesel engine which is still on the boat. It ceased to be used apparently

in either 2003 or 2004 when the then owner forgot to leave the bilge pump operating, and the boat sank. At the point when the Appellant acquired possession of the Norseman it had been raised and cleaned and was presumably located on hardstanding in Shoreham harbour. The Appellant said in his Witness Statement that:

> *"Norseman is a wooden hulled 108-year old ex-admiralty harbour launch. She had been in a boat yard in Shoreham having sunk in Shoreham harbour. The owner had cleaned Norseman so that she was fit to live on but the damage to the hull required extensive repairs to be undertaken in a boatyard."*

The complex structure for the acquisition of the Norseman

7. The financial terms for the acquisition of the boat were complex. The seller was a private owner, not registered for VAT, and married to a solicitor. The Appellant had worked himself in the past in corporate finance, so that between them they devised a very involved acquisition structure that we may somewhat misdescribe, albeit that this will be immaterial. The "as was" value of the boat was assumed to be £9,000. The Appellant sought government aid in some form of "back to work" scheme by claiming that he would rent the boat under a lease agreement, and commence a business in which he was to charge the seller in monthly instalments for his work in renovating the boat. His monthly charges of £400 a month were essentially spent on parts needed to renovate the boat and make it suitable and more comfortable as his home. Although he charged the seller for these monthly amounts, we understood that they were mirrored by the fact that the lease agreement under which he rented the boat gave him a nominal purchase option at the end of the lease period, and that to reflect the improved state of the boat, the term of the lease was extended so that the rentals would equate not to the £9,000 "as was" value of the boat, but to that figure enhanced by the £400 monthly payments that the seller had paid to the Appellant for improving the state of the boat. Accordingly the lease was extended such that rentals of £15,200 had been paid by the time the adjusted lease period had expired and the nominal purchase option was exercised. We are not clear as to the split in benefit payments that the Appellant received in one way or another, but we are clear that he claimed not only benefits under the "back to work" scheme, by claiming that his work on the boat constituted a business of improving the boat for the seller, but he also claimed housing benefit, and that between them the payments under the two schemes funded the entire rental cost. Although he had thus charged the seller £400 a month for the work on the boat, that charge was slightly illusory since the increase in the term of the lease increased the rental payments by the amount received from the seller, and the rental payments themselves were all funded out of one or another state subsidy.

Moving the Norseman to the Thames and standing it and mooring it at BML's marina

8. In November 2010 the seller paid £1000 for the boat to be carried by lorry to the Thames-side premises of BML, the £1000 again being rolled up into the increased rental liability. The Appellant had apparently tried to find land-based accommodation for the boat at numerous boatyards on the Thames, and BML was the only one prepared to grant him the required licence, and to allow him to live on the boat whilst working on it. It was suggested that BML might have ignored some planning constraint which precluded them

from allowing people to live on the boats moored at their marina, and that similar constraints may have explained why he had been unable to locate his boat at any of the other boatyards.

9. The result was that BML granted the Appellant a one-year licence from November 2010 to November 2011 to locate his boat on the concrete hardstanding close to the water at their marina so that he could first attend to the required work on the hull, and then commence the interior work. BML treated that supply as being a standard-rated supply since BML had exercised the option to tax, so that BML paid VAT to HMRC in respect of it.

10. By the time, the Appellant came to pay the twelfth monthly payment of rent, he had concluded that VAT should not have been charged in respect of the licence. Since the last payment of rent equated roughly to the VAT that he claimed he had wrongly suffered in respect of the first 11 payments, the Appellant refused to pay the last payment of rent. Notwithstanding this, he was still apparently given a 6-month licence from November 2011 to mid-2012 to moor his boat in the marina so as to facilitate his final fitting out work, for which BML again rendered the charge on a standard-rated basis. For some reason the Appellant did not challenge this, and thus he paid the 6 months of VAT-inclusive rental.

11. BML has apparently sued the Appellant in the County Court for the twelfth instalment of rent for the land-based licence and the Appellant has counter-claimed for a repayment by BML of the VAT elements of the charges paid for the 6-month mooring on the basis that those supplies and charges should also have been exempt from VAT.

12. The first two matters in the Appeal before us were claims against HMRC that HMRC should refund to the Appellant all the VAT charged in respect of both the land-based licence charges and the mooring charges since both should have been exempt from VAT. HMRC's response to this claim was that the Appellant should have brought his claim against BML for "over-charging" him, by adding the VAT, rather than seeking to recover the VAT directly from HMRC that had never directly charged him, or received any VAT directly from him. Beyond that, however, HMRC asserted that BML had in fact rightly charged VAT in respect of both licence supplies, so that his claim against either BML or HMRC was anyway unfounded.

13. By way of adding the final relevant facts in relation to mooring charges, we understand that BML gave the Appellant notice of termination of the mooring licence in mid-2012, and that the Appellant moved the Norseman down the Thames, onto the river Kennet, and the Norseman is currently moored at various points either on the river Kennet or the Kennet and Avon canal, without suffering any mooring charges.

The purchase of parts and equipment

14. The other matter in dispute is quite distinct. In the course of the work of repair and renovation, the Appellant acquired parts from approximately 200 suppliers, some on eBay, and about 10 to 20 being significant sized VAT-registered chandleries and other traders. The Appellant had kept none of the invoices for his numerous purchases, though he assumed that he had been charged VAT in respect of all the supplies from VAT-registered traders. Some of the suppliers on eBay might well have been private individuals or non-VAT-registered traders.

15. At some point it came to the attention of the Appellant that the supply of parts and equipment for the boat might properly have been zero-rated for VAT purposes, so that the third element of the Appellant's claim against HMRC was that he should be entitled to recover directly from HMRC the VAT that he had been wrongly charged.

16. In contrast to the dispute about the licence fees, there was some common ground between the parties in relation to this third issue. HMRC again pointed out that insofar as any of the supplies might have ranked as zero-rated supplies, the Appellant should still be seeking to recover the excess price paid for those items from the suppliers and not HMRC. HMRC did however accept that it was possible that some of the supplies of parts and equipment ought to have been zero-rated supplies, rather than standard-rated supplies.

17. The relevant provisions in this context were the provisions contained in Group 8 Schedule 8 VAT Act 1994, under the heading "Transport". These provisions rendered supplies of "qualifying ships", and supplies for the repair, maintenance and conversion of qualifying ships as zero-rated supplies. In addition, paragraph 2A of Group 8 provided that:

> *"the supply of parts and equipment, of a kind ordinarily installed or incorporated in, and to be installed, or incorporated in:*
>
> *(a) the propulsion, navigation or communication systems; or*
> *(b) the general structure,*
>
> *of a qualifying ship"* were also zero-rated.

18. The definition of the expression "qualifying ship" is that any boat in excess of 15 tons that is not used for recreation or pleasure is a qualifying ship. It has long been established that a boat fitted out to be a permanent residence is not to be regarded as one used for recreation or pleasure. This strikes us as a somewhat anomalous result since the relevant provisions are principally directed at transport by ships and aircraft, and a boat fitted out as a residence may never move at all. In any event it is unlikely to be used for transport services. Notwithstanding this, it was accepted by HMRC, and clearly accepted by us, that the Norseman was indeed a qualifying ship. It exceeded 15 tons in weight, and was fitted out for residential use.

19. Two difficult points arise in relation to the application of the provision quoted in paragraph 17 above. The first is that if a chandlery supplier supplies, say, a brass propeller, it is reasonably obvious that the propeller will be incorporated into the propulsion system of a boat, but the supplier must still ascertain whether the boat for which it is intended ranks as a qualifying ship or not. Propellers supplied for boats on the Thames will generally be fitted to cruisers and pleasure boats, such that the supplies will usually not be zero-rated. To deal with this point the customer is provided (in a public Notice published by HMRC) with the terms of a declaration that he can present to a chandlery or supplier confirming, when appropriate, that the particular parts being purchased are indeed to be fitted to a qualifying ship.

20. The second difficult point of interpretation that must be considered before any chandlery or other supplier supplies spares to be incorporated into a qualifying ship is that HMRC contends that the category of spares that are potentially zero-rated under the provision quoted in paragraph 17 above must be "ship-like". Accordingly, the supply of equipment,

such as cooking equipment that might equally be incorporated in a boat or on land is not "ship-like". Just as paragraph (a) of the provision quoted above quite clearly addresses items that are inherently associated with boats, the reference in paragraph (b) to the structure of the qualifying ship also carries the notion that the further spares must be inherently related to ships, and not just general items. Accordingly HMRC has published a Notice that in addition to providing the terms of an appropriate declaration to be given by a customer that the parts are to be fitted to a qualifying ship, also gives guidance as to the type of spares likely to be regarded as "ship-like", and those that are considered appropriate to more general use such as not to be zero-rated under the relevant paragraph 2A of Group 5 Schedule 8.

21. The Appellant disputes HMRC's interpretation of paragraph 2A. He contends that supplies should be zero-rated as soon as it can be said that they can be said to be "ordinarily installed" on qualifying ships. Thus spares that it would be inappropriate to install on ships will not rank as zero-rated, but once it is concluded that supplies might perfectly appropriately be installed on a qualifying ship, it is unnecessary to deal with the further issue that HMRC suggests to be relevant, namely whether the spares are particularly "ship-like".

22. The Appellant was therefore seeking direct recovery from HMRC of the VAT in respect of all the parts that he had purchased. He also requested certificates that all the relevant parts had potentially qualified for zero-rated treatment. He also asked us, as the Tribunal, to order HMRC to re-write their Notice in relation to "ship-like" and non "ship-like" parts and equipment. In response, HMRC claimed first that the Appellant's recourse should have been against his suppliers. HMRC then pointed out that the Appellant had provided no invoices for any of the purchases so that it could not be shown that VAT had been paid in respect of any of them. Even on the assumption that VAT-registered traders, not provided with the declaration that the parts were to be installed on a qualifying ship, would very likely have treated the supplies as being standard-rated, there was still no information as to who had supplied anything, and therefore no way of knowing whether suppliers had been VAT-registered, or indeed just private individuals not carrying on a business at all. Beyond this, the Appellant had never identified the nature of any single part or piece of equipment to enable HMRC to judge whether they accepted, on their interpretation of paragraph 2A, whether it was "ship-like" or not. HMRC finally contended that we had no jurisdiction to order HMRC to re-write their public Notice.

Our decisions

23. We will now summarise the further contentions advanced by the Appellant in relation to the three matters in dispute, and our decisions on these issues, addressing at this stage only the strict VAT law, and ignoring the Human Rights Convention and the terms of the Equality Act 2010. We will deal first with the grants of the two licences by B ML.

The further contentions of the Appellant and our decisions in relation to the charges rendered by BML for the land based-licence and the mooring licence, based on the application of the law in relating to VAT, disregarding the Human Rights Convention and the Equality Act

24. These first two related issues depend on the proper construction of Group 1 Schedule 9 and Group 10 VAT Act 1994.

25. The first material point is that while Group 1 Schedule 9 provides generally that grants of any interest in or right over land are to be exempt supplies (subject to the option to tax), there are various grants that can never qualify as exempt supplies. This has nothing to do with the supplier's option to tax but simply results from the various exceptions in Group 1, listing the supplies that cannot be exempt under Schedule 9.

26. It appears to us that none of the exceptions positively precludes the 12-monthy licence to leave the Norseman on the concrete hardstanding from potentially being exempt under Group 1 Schedule 9. Once the boat was put back into the water, however, a relevant exception to the exempt category appears to apply because paragraph 1 (k) provides that:

> *"the grant of facilities for housing, or storage of, an aircraft or for mooring, or storage of a ship, boat or other vessel"*

cannot rank as an exempt supply. The Appellant contended that we should add wording to this provision and modify the meaning of mooring to refer only to moorings for pleasure or recreational boats, so as not to apply to boats that constituted a dwelling or residence. "Mooring" is defined to include "anchoring or berthing", and there is no justification for adding the words that the Appellant suggests should be added.

27. The above point precludes the grant of the mooring licence for the 6-months from November 2011 to mid-2012 from being exempt, but it has no bearing on the land-based licence, and there is in any event a further point of significance in relation to the grant of the mooring licence.

28. The further significant point is that BML waived their right to exempt land supplies from VAT, such that VAT is inevitably to be charged by BML on any licences either over land or mooring licences. This result is however subject to the further qualification that grants are precluded from being covered by the option to tax in three situations of conceivable relevance in this case, namely where the grants are in respect of "dwellings, residential caravans or residential houseboats". If the Appellant can show that the grant of the 12-month licence in respect of the land-based licence was a grant in respect of dwellings or residential caravans, then the option to tax by BML would not apply and the grant would have been an exempt supply. The same could not apply in relation to the 6-month licence to moor even if the Norseman could have been said to be a houseboat because of the over-riding point made in paragraph 26 above.

29. The Appellant conceded that the Norseman could not rank as a houseboat because the definition of a houseboat required houseboats to have, or readily to be adapted for, self-propulsion. Since the Norseman had an engine that could propel it and that did periodically propel it, it was clear, and indeed conceded by the Appellant, that it could not rank as a houseboat.

30. It accordingly follows that BML's option to tax becomes a second reason, in addition to the anyway conclusive reason given in paragraph 26 above as to why the mooring licence must have remained standard-rated. First it could not have been exempt under Group 9 Item 1 of Schedule 9 in any event. Secondly BML had elected to tax grants over land, and since the mooring grant was not on any basis in respect of a houseboat, the option to tax was not disapplied.

31. The Appellant did, however, claim that the grant of the land-based licence was excluded from the effect of BML's decision to opt to tax, either because it was a grant in respect of a dwelling or a grant in respect of a caravan. Neither contention is remotely tenable.

32. Paragraph 5 Schedule 10 makes it clear that it is not sufficient that the Appellant contends that his boat was his "dwelling" when it was located on the concrete hardstanding from November 2010 to November 2011, such that the licence to locate it on the hardstanding would remain "exempt", and excluded from the effect of BML's option to tax. This is because paragraph 5 makes it absolutely clear that the reference to dwellings is a reference to "buildings or parts of buildings that constitute dwellings", and it cannot possibly be suggested that this boat was a building.

33. The Appellant did however contend that BML's option to tax was disapplied in relation to the land-based grant of the licence from November 2010 to November 2011 because it was a *"grant made in relation to a pitch for a residential caravan."* A caravan was also said not to be a *"residential caravan if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission."* Without any hesitation we reject the suggestion that the option to tax can have been disapplied by virtue of this provision. It seems likely that there may have been some breach of planning law in the Appellant being allowed to live on his boat. Whether that was so or not, it is impossible to say that a boat became a caravan simply because the Appellant was living in it, and because it had been hauled onto the land. Peggotty's up-turned boat may have become a famous land-based residence, but nobody would have called it a caravan. It no longer looked entirely like a boat, however, and was plainly based on land in order to be a dwelling. The Appellant's boat remained a boat when it was on the concrete hardstanding. It was essentially on the hardstanding so that the boat's hull could be repaired, and so that other work could conveniently be undertaken on it. The Appellant may have been living on it, but the apt description of the situation is that a boat had been removed from the water for remedial work, and it remained a boat in which the Appellant was living. Beyond it being perfectly obvious that it simply cannot be described as a caravan, the Appellant himself is of course contending that it was a qualifying ship during the year when it was based on the land, which description we and HMRC both agree with. A qualifying ship or indeed any boat that is plainly a boat is simply not a caravan.

34. It accordingly follows that BML's option to tax grants of interests in relation to land cannot have been disapplied by any of the provisions in Schedule 10 dealing with buildings that ranked as dwellings, caravans or houseboats, because the Norseman cannot even on some utterly weird interpretation fall within any of those concepts and definitions.

35. It follows that BML correctly charged and accounted for VAT in respect of the licences granted for the periods November 2010 to November 2011 and November 2011 to mid-2012 whilst the Norseman was on the concrete hardstanding and in the water respectively.

36. There is one further material point in relation to the Appellant's present Appeal which is of course an Appeal concerning HMRC, rather than BML. Part of the explanation that the Appeal is against HMRC relates to the Appellant's claim that HMRC should have rewritten its guidance Note in relation to "ship-like parts and equipment", and "non-ship-like" items and that HMRC ought to have given the Appellant various certificates or confirmations that parts and equipment purchased should not have suffered VAT.

37. Whatever the explanation, the fact remains that it was BML and the various suppliers of parts and equipment who have accounted for VAT to HMRC and as a result incorporated the cost of VAT in their charges to the Appellant. Accordingly the Appellant's principal claim should have been against the relevant suppliers, rather than for the recovery of VAT that the Appellant had never itself paid to HMRC.

38. Our understanding of the position is that there may shortly be further European authority on the issue of whether a customer who alleges that he has been overcharged because his supplier has wrongly accounted for VAT, and thus increased the charge to the customer to cover the cost of the VAT liability, can directly recover the VAT from the taxing authority. We also understand that such a claim has been considered in Italy, but only where the limitation period for recovering from the supplier had elapsed whilst that for seeking direct recovery from the taxing authority had not. That is not the case in the present case, since any effort to recover excessive charges made by the supplier has not become time barred, and suppliers appear still to be within the 4-year period in which they can recover from HMRC wrongly-paid VAT had the VAT in fact been wrongly paid. It is also clear that the Appellant's first resort should certainly have been to seek recovery from the suppliers, i.e. BML, in the case of the claims about over-charging in relation to the licence fees for land based and mooring rights, rather than directly from HMRC.

39. In an effort to ensure that this dispute is not repeatedly passed from court to court, with the County Court perhaps saying that the right treatment in relation to VAT should be resolved by the First-tier Tribunal, Tax Chamber, we have reached and given our conclusion on the VAT issue in relation to the licence fees, even if strictly HMRC could have claimed that the Appellant's action should have been against BML. We should indicate that HMRC was entirely content that we should deal with the case as we have done, in order to provide our decision in relation to whether VAT should or should not have been charged.

Our decision in relation to the acquisition of parts and equipment, and whether suppliers should have zero-rated some of the relevant supplies

40. There is considerably more common ground between HMRC and the Appellant in relation to the potential zero-rated status of some of the supplies of parts and equipment. HMRC concedes that the Norseman is a qualifying ship, and HMRC therefore concede that had the Appellant shown that he had suffered VAT in respect of his various purchases, and had the spares in question been "ship-like" on HMRC's interpretation of the provision quoted in paragraph 17 above, then suppliers could quite properly have zero-rated the supplies. The present problems thus revolve around the facts that:

- once again, the Appellant's recourse should have been against his suppliers, rather than HMRC;
- the Appellant has no invoices to indicate whether VAT had been charged or not; and
- the Appellant has never provided HMRC, during the long period in which matters have been discussed and disputed between the Appellant and HMRC, with the identity of any parts that have actually been purchased, such that HMRC can consider whether they pass or fail HMRC's "ship-like" tests. The Appellant may have described particular aspects of the work undertaken, but he has never identified actual parts purchased.

41. In an effort to be helpful to the Appellant, we suggested to the Appellant that there was presumably little purpose in his trying to recover VAT that may or may not have been charged by numerous, quite possibly non-VAT registered, suppliers on eBay. If, however there are between 10 and 20 chandleries or similar suppliers that are plainly VAT-registered, and the Appellant wrote to each requesting a repayment of an excess amount charged on account of the failure of all parties to appreciate that some supplies should have been zero-rated, this might be a practical way in which the Appellant could recover some of any wrongly-paid VAT. We suggested that our Decision, or HMRC's similar confirmation, could make it absolutely clear that the parts supplied were to be incorporated into a qualifying ship, and HMRC even conceded that if the Appellant provided a list of items purchased, HMRC would indicate those that it considered to be "ship-like" and therefore, on HMRC's approach, to be supplies that should initially have been zero-rated. With requests for repayments presented in this manner, and of course presented quickly before the 4-year period for the suppliers to recover their wrongly-paid VAT expires, it seemed possible that at least some traders might make the refunds, since they would at least be confident (in the light of HMRC's assistance given to the Appellant), that they themselves ought to recover the wrongly-paid VAT without undue difficulty.

42. In the meantime, we record the following decisions in relation to this aspect of the dispute. We decide that:

- HMRC's narrower interpretation of the category of "ship-like" parts and equipment that can be supplied on a zero-rated basis is correct, and it is wrong to suggest that anything that is fitted to a ship, other than inappropriate items, can be supplied on a zero-rated basis. The reference to "parts and equipment" suggests this; the fact that the items identified at paragraph 2A (a) specifically identify parts and equipment that are obviously inherently related to ships (which would be superfluous if paragraph 2A covered everything that might be installed on a ship), and the very reference to the "structure" of the ship, all confirm this interpretation.
- we cannot give decisions in relation to any particular items of plant and equipment because we share with HMRC the difficulty that not a single item has been identified; and
- we reject the suggestion that we should order HMRC to re-write their guidance Notice in relation to those items that are "ship-like" and those that are not. Beyond our having no jurisdiction to make such an order, we can only give our decision on the status of any identified items that are described to us, and none have been.

The general issue of whether there is any legitimate claim of discrimination, disregarding the provisions of the Human Rights Convention and the Equality Act 2010 and the issue of whether there is any remedy if there is such discrimination

43. Prior to considering whether the Appellant has any justifiable claim under the Human Rights Convention, the Equality Act and the issue of whether, if he does, we can give any redress, we might first comment on the generality of the Appellant's complaint.

44. At the general level, the Appellant claims that there is a general policy thread running through the VAT legislation to the effect that VAT should not be charged on any sort of provision of a residence. Accordingly, there are provisions for new-build housing supplies to be zero-rated, for self-builders, and those that convert non-dwellings into dwellings to

recover VAT, and provisions for residential caravans and houseboats to be zero-rated. Licences for the sites of residential caravans and moorings for houseboats are also exempt, and as we have already noted, this is so regardless of whether the supplier might have exercised the option to tax. The offensive omission, according to the Appellant, is the case of the person who makes his home on a boat that is residential but not a houseboat. Mooring charges for such boats will be standard-rated; initial supplies of such boats and indeed any supplies in relation to conversions (to take the most extreme example) will be standard-rated unless the boats exceed 15 tons. By far the most common boats equipped as residences or dwellings will be canal boats (either converted working boats, or converted hire boats that may have had numerous cabins and berths) and unless any such boats exceeded 15 tons in weight, no conversions or supplies in relation to them would have been either zero-rated or exempt.

45. So far as the three charges to VAT involved in the present Appeal are concerned, there appears to be some anomaly or discrimination in relation to the mooring charges, but arguably none on any basis in relation to the charge for the land-based licence and a rather confused picture in relation to the VAT treatment of the supplies in relation to a qualifying ship.

46. So far as the land-based licence charge is concerned, once BML had opted to charge tax rather than retain the exemption for land supplies, any licence to someone to locate their residential boat, pleasure boat or even houseboat on the concrete hardstanding would have been standard rated. Even in the case of the houseboat, the supply in question would not have been a supply of a site for a caravan or a permanent mooring for a houseboat. It would not have been a mooring at all. It would have been a licence to locate a houseboat on land for the purpose of repairs, and even if the owner had continued to live on the boat, it could not have been ranked as a permanent mooring.

47. In the case of the provision of parts and equipment, there is almost an anomaly in the reverse direction. Admittedly most water-based residents will be living on canal boats or cruisers that weigh less than 15 tons so that their boats will never be qualifying ships. The Appellant's boat is however a qualifying ship with the consequence that not only a supply of that boat by a VAT-registered trader would have been zero-rated but so too would all supplies of repair work and maintenance on it have been zero-rated. This is in contrast to the position in relation to dwelling houses where all supplies in relation to repairs, maintenance, improvement and extension are standard-rated. The explanation for this anomaly is indeed that the basis on which the Appellant's boat ranks as a qualifying ship is that it meets a definition most obviously aimed at commercially operated ships above 15 tons used for transport purposes. We accept that the fact that the Appellant's boat ranks as a qualifying ship is plainly correct, but it is odd, and the oddity results from the fact that the provision that has this effect is aimed at ships and aircraft used for transport, and it is not remotely considering anything about residential accommodation.

48. There is one conceivable respect in which the Appellant's work on the Norseman may have involved some claim of discrimination in contrast to the work involved in converting a building from a non-residential use to residential. For where that test in the case of buildings is satisfied all the work and all purchases should be zero-rated. By contrast, although the Appellant has the curious advantage in his favour that any supplies to him of repair and maintenance work would be zero-rated, there will have been some purchases of parts and equipment that will not have fallen with the category of parts and equipment

rendered zero-rated by paragraph 2A Group 5 Schedule 8. Accordingly, if the Appellant could be said to have been "converting" the Norseman from non-residential to residential, it might be said that the feature that some of the supplies would not have been zero-rated was to be contrasted with the equivalent position on the conversion of a non-residential building into a residence.

49. It is difficult to know how one should apply the provisions (in considering possible discrimination in very general terms) concerning the "conversion" of buildings when dealing with work on a boat. There is first, and obviously, no issue of planning consent being required. Secondly, HMRC pointed out in this case that in the light of the confirmation given in the Appellant's Witness Statement quoted in paragraph 6 above, the Norseman had been "fit to live in" when the Appellant had acquired it. Furthermore he did live in it when it was on BML's concrete hardstanding, he claimed and obtained housing benefit in respect of his occupation, and his discrimination complaint in relation to the two licences was that there was discrimination between his situation and other situations were licences were granted for residential accommodation of caravans and houseboats. Admittedly the Appellant did considerable work to render the Norseman more comfortable, and more suitable as residential accommodation, but when trying to compare his work and his expenditure on the standard-rated items of parts and equipment, it is far from clear that the work was on conversion, as distinct from improvement.

50. Having made these various points, we do accept, with the Appellant, that the general perceived policy in the VAT legislation of eliminating the standard-rated charge to VAT in relation to dwellings, residential caravans and houseboats is not extended to residential boats, and that for instance it is perhaps odd that the provision of sites for residential caravans and moorings for houseboats are exempt supplies, whilst the provision of mooring sites for residential boats is standard-rated.

51. The problem that the Appellant faces, however, is the issue of whether there is any way in which he can secure redress for what he considers to be unfair discrimination.

The claims concerning breach of the Human Rights Convention and discrimination under the Equality Act

52. The Appellant contends that the present VAT law infringes Article 8, or Article 8 coupled with Article 14 of the Human Rights Convention. Were it to do so, our first obligation would be to interpret the VAT provisions, if feasible, in a manner that would be compliant with the Convention. In this context, we have considered whether, if we accepted the contention of some contravention of the Convention, we might revise our interpretation of paragraph 1(k) of Group 1 of Schedule 9 to the VAT Act 1994, and conclude that its apparent denial of exempt status for moorings should be confined to pleasure or recreational moorings. Our answer to that is that no different interpretation than the one we reached in paragraph 26 is tenable. Even if it were, BML exercised the option to tax, and there is no way in which either the land-based or the mooring-based licences could be said to be licences for caravans or houseboats.

53. Leaving aside those inadmissible points of interpretation, we conclude that neither Article 8, nor Articles 8 and 14 together, are remotely infringed by the facts of this case, and the standard-rated treatment of the land and water based licences.

54. Article 8 of the Convention provides as follows:

"Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

55. Article 14 reads as follows:

"Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

56. There are several grounds for concluding that there cannot possibly have been any infringement of the Convention's provisions quoted above. Firstly there needs to have been an interference with the rights protected by Article 8 by a public authority. The Appellant claimed that BML was an agent of the state because it was collecting VAT on behalf of HMRC so that it was effectively a public authority. It is not. It is a taxpayer properly accounting for the tax correctly due in respect of supplies that it has made.

57. The cases place considerable emphasis on the fact that the core objective of Article 8, when drafted in 1948, was to provide redress against invasions into people's houses, or arbitrary interference with their rights by public authorities such as those that had been prevalent in Nazi Germany. The Respondents' counsel suggested, and we agree, that the cardinal principle was to protect the individual against arbitrary interference by public authorities. In the present case, the VAT treatment of all supplies in relation to boats (ignoring the exception for qualifying ships) is that all supplies of the boats in the first place, all mooring charges, and charges for repairs and maintenance are all standard-rated supplies for VAT purposes, regardless of whether the boats are used for pleasure purposes, or as part-time, or full-time residences. Nothing therefore encroaches onto the right to possession of the boats in any way; nothing is arbitrary, and it seems odd to suggest that there has been discrimination against the Appellant in the present case when in fact in one way or another all the costs that resulted in the acquisition and improvement of the boat in the first place were entirely funded by state grants.

58. We consider that Article 14 adds nothing in the present case. There is absolutely no evidence that the present VAT provisions are based in any way on intended discrimination against "water-dwellers". The Appellant sought to suggest that there was discrimination against those who wished to live a more eco-friendly life, and he suggested that his carbon footprint was one tenth that of somebody living on the land. Whilst the appellant in the case of *Grainger plc and others v. Nicholson* UKEAT/219/09 established, when dismissed

from employment for various reasons geared to his apparent belief in eco-principles, that belief in such principles could be a "philosophical belief", it certainly cannot be suggested in this Appeal that there is any policy underlying the VAT legislation that intentionally discriminates against people living eco-friendly lives, or indeed people living on boats. The opposite is obviously the case, with grants for insulation and people being encouraged in every way to save energy. Quite apart from that, it seems far from obvious why it is indeed more eco-friendly to live on a boat than in a similar size land-based dwelling. In winter, the water obviously loses its daytime heat more rapidly than the land; humidity is naturally higher on water; boats are more difficult to insulate than small buildings, and in many cases electricity is generated by running diesel engines or Honda petrol generators. In any event the claim that there is the remotest direct or indirect discrimination against either people who pursue eco-friendly lives or those who live on boats is totally non-proven. Without there being any evidence in either direction, it seems reasonable to assume that gypsies can suffer some discrimination, but water-based dwellers are usually thought to be rather charming, and wished well in what must be quite a hard life at times.

59. We conclude that the provisions of the Human Rights Convention have not been infringed in this case. Were we wrong in relation to that, several further points become material.

60. We have already dealt with the issue of whether we would have been able to strain the interpretation of the VAT legislation to be Human Rights compliant, and have concluded that this would not have been possible.

61. We then reach the position that the First-tier Tribunal could not reach a conclusion, initially based on a finding of some breach of Articles 8 and 14, that some aspect of UK VAT law was non-compliant. Only a higher court can reach that conclusion. In any event, the Respondents' counsel pointed out that it would actually breach European law for the UK to amend and extend its zero-rating and exemption provisions. The Sixth Directive permitted the UK to retain certain of its pre-existing zero-rating and exemption provisions, but precluded the creation of any others, or legislative changes that would have that effect. Were it therefore thought desirable by Parliament to provide certain new VAT privileges to water-based dwellers, or were a higher court to conclude that Parliament should be encouraged to change VAT law, such a change to the provisions, extending the zero-rating and/or exemption provisions to cover residential boats as well as houseboats would infringe the terms of the European Directive.

62. Since therefore we, as the First-tier Tribunal, can clearly not modify UK statute law or declare it non-compliant with Human Rights principles, there is no redress that we could possibly give even if we had agreed with the Appellant's claim that his Convention liberties and rights had been infringed. We conclude, however, that they have not been infringed.

The Equality Act

63. We reach the similar conclusion that, even if there may be a slight gap in the VAT provisions that deal with dwellings, there cannot be the slightest suspicion, and certainly no evidence, that this has resulted from any discrimination based on any of the characteristics that the Act contemplates might lead to discrimination. Those characteristics are:

- age;

- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex, and
- sexual orientation.

64. It may have been decided that dismissing an employee because of his dedication to eco-principles was discrimination against a philosophical belief, and that there was therefore discrimination on that ground. It is inconceivable in the present case, however, to suggest, that the absence of a VAT saving for water-borne dwellers results from any prejudice against them as a class, or against those with eco-friendly beliefs even if the utterly unwarranted leap is made of suggesting that all water-borne dwellers choose their life-style on account of eco-principles. We consider it perfectly clear that section 13 of the Equality Act only engages the principles of the Act if the discrimination does result from some prejudice against one of the protected characteristics listed above. The Appellant himself attributed the absence of any extension of the savings in relation to new-build houses, self-builders, provisions of caravans and houseboats to the way in which the cold winter of 1962 drove the remaining few Number One (i.e. "owner/operator) boatmen off the canals, so that when the VAT provisions were being drafted in 1972, there were no water-borne dwellers. Accordingly no thought was given at all to such water-borne residents. If this is right, the absence of the provision will have resulted entirely from omission, and not from any deliberate aim to discriminate against any particular characteristic. We consider it inconceivable that any perceived gap in the VAT legislation resulted from a policy decision to drive either boat dwellers off the water, or to discourage eco-friendly people (barely heard of in 1972) from living on boats.

65. We have some final observations to make in relation to the largely irrelevant issue of whether there appear to us to be policy difficulties in achieving what the Appellant seeks which is effectively that the supply of boats as dwellings might be zero-rated in the way in which supplies of residential caravans and houseboats are zero-rated under Group 9 Schedule 8 VAT Act 1994, and licences for their sites or moorings are exempt supplies. This treatment would of course not precisely mirror that applicable to the provision of new-build houses, and conversions of non-dwellings into dwellings, but would achieve roughly the same effect, and certainly the same effect as that in relation to the residential caravans and houseboats.

66. The Respondents' counsel suggested that this enquiry was completely academic because of the Directive prohibition on the categories of zero-rated and exempt supplies being extended. It is of some significance, however, that any proposal on these lines would in any event be difficult to achieve.

67. Whilst the VAT exemptions are confined of course to residential caravans, rather than those normally towed behind cars, it is certainly the case that the preferential treatment applies to all such residential caravans and houseboats, regardless of whether they rank as the owner's only or principal home or not. They might be used only in the summer. Similarly the provisions in relation to new-build houses apply regardless of whether a particular buyer might only own the one house, or might be buying a country cottage or a second or third

house. Considering that issue in relation to boats, and most obviously canal boats, vast numbers of such boats are used purely for holiday purposes by their sole owners, possibly with the boats being used for a few weeks in a year, or for several months, but not necessarily for the majority of the year. The fit-out of such boats will often however be entirely suitable for full-time occupation, just as the fit-out is equally suitable when the boat is used for three months in the summer. How would such boats be dealt with, particularly in the light of the obvious expectation that pleasure and recreational boats should not benefit from any of the VAT privileges and particularly when one remembers that virtually every such private boat will almost inevitably have a full-time dedicated mooring place in a marina? Furthermore, boats could be sold easily from one owner to another with no need for any conversion, yet there would be obvious difficulties if a boat was initially sold to a residential owner on a zero-rated basis, and then sold to a holiday user.

68. It is irrelevant to consider these issues in any detail. The present position is that the VAT law itself is clear. We consider that there has been no breach of the rights and liberties accorded by the Human Rights Convention or the protections given in the Equality Act. Were the Appellant to claim before a different court that UK statute law was non-compliant with European Directives, and the Convention, that would only raise the difficulty that the UK ought to be precluded anyway from increasing the categories of zero-rated and exempt supplies. And were the challenge to be at the European level, it is far from clear that it would be feasible to introduce a workable extension of the principles applicable to residential caravans and houseboats to other boats.

Final summary decision

69. Our decision is that the Appellant's Appeal is dismissed as regards the rentals charged by BML for the land-based and mooring licences. Both were properly treated as standard-rated supplies. The Appeal in relation to supplies of parts and equipment for a qualifying ship is dismissed in that at present the claim is brought against the wrong party (HMRC rather than the original suppliers), there is no evidence that VAT was in fact charged on any of the supplies, and the identity of parts and equipment that were purchased has never been disclosed. It is nevertheless the case that we confirm, and HMRC confirms, that the Norseman was a qualifying ship. HMRC has expressed a readiness to look at a list of purchased items, and indicate which they consider to be "ship-like". HMRC may or may not then accept that the likely default position by a VAT-registered supplier would have been to sell the items on a standard-rated basis. It is even possible that suppliers requested to make refunds by the Appellant may be able to confirm that their initial supplies had been made on a standard-rated basis. It is therefore possible that the Appellant may yet recover some element of VAT wrongly charged. We emphasise, as did HMRC, that any such claims for repayment should obviously be made as quickly as possible so that any suppliers who are prepared to refund the element of price charged on the Appellant will themselves be able to recover the wrongly-paid VAT within the 4-year period for making such repayment claims.

Right of Appeal

70. This document contains full findings of fact and the reasons for our decision in relation to each appeal. Any party dissatisfied with the decision relevant to it 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.

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HOWARD M. NOWLAN
TRIBUNAL JUDGE

RELEASE DATE: 23 May 2014