TC04109

Appeal number: TC/2013/04856 & TC/2013/04857

VAT - late registration - assessment of consultant psychiatrist's medico legal services - not exempt under Group 7 of Schedule 9 VAT Act 1994 - Appellant sought to recover VAT not charged on original invoices by issuing supplemental VAT invoices following registration - claim for bad debt relief on VAT not recovered from Legal Aid Authority - whether unjust enrichment to the state - no - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

DR ALICE DUNCAN & BASCGALLIWHITE LTD — **Appellants**

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL
MR JOHN DAVISON

Sitting in public at City Exchange, Albion Street, Leeds on 12 September 2014

Mr David Adams, Chartered Accountant, for the Appellant

Mr Bernard Haley Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

1. Dr Alice Duncan and Bascgalliwhite Limited (“the Appellants”) appeal against HMRC’s decisions: (a) to refuse a claim that unpaid supplementary invoices should be subject to full relief from Value Added Tax ("VAT") on bad debts in accordance with the provisions of Section 36 of the Value Added Taxes Act 1994 ("the Act") and by association, (b) to assess the Appellant pursuant to Section 73 of the Act for the VAT inclusive value of the sales during the periods for which the Appellant was liable.

2. The issue for determination is whether the Appellant should account for VAT on payments received for taxable supplies in circumstances where supplementary VAT only invoices, issued to customers almost all of whom were funded by legal aid, remain unpaid.

Background

3. During the period 1 December 2008 to 1 November 2009 Dr Duncan, a consultant psychiatrist, operated a business supplying psychiatric and medical services which included medico-legal work. During this period she believed that the medico-legal work she undertook was part of a VAT exempt supply of medical services.

4. Dr Duncan incorporated her business on 15 September 2009 and thereafter operated as Bascgalliwhite Limited, which continued to supply the same services. Dr. Duncan is the company's sole shareholder and director. Neither Dr Duncan nor Bascgalliwhite Limited was registered for VAT, and so VAT was not charged on their services.

5. On 13 July 2011 Dr Duncan’s representative wrote to HMRC asking for clarification of the VAT liability status of certain supplies including the medico-legal work, as it may have had implications regarding her requirement to register for VAT.

6. There were two main areas of work. The first was hospital attendances where Dr Duncan, up until 15 September 2009, and thereafter Bascgalliwhite Limited, provided psychiatric assessments, treatment and care to inpatients. In addition, a large volume of medico-legal work was also undertaken which the Appellants believed was also exempt. The work arose out of care proceedings under the Children Act 1989 and was undertaken for the Family Court. Most (up to 90%) was in respect of children on the Authority's 'at risk' register who were either in care or in foster placements.

7. The nature of the work undertaken by the Appellants was to carry out psychiatric assessments of the parents of children at risk, in order to determine whether the child could be returned to their parental care and if so, whether safeguards should be put in place. This involved assessments of the underlying psychiatric conditions of the parents, advising on their treatment regimes, the

prognosis for the future, and the risks associated with them failing to take medication or undergo other forms of treatment.

8. The work involved clinical examination of the individuals in their homes, on hospital premises or in solicitor's offices. It also involved reviewing their medical files, notes from other doctors and the treatments recommended by other medical practitioners. The Appellants then prepared reports for consideration by the parties and the Court. The individuals assessed did not become the Appellant's patients but remained under the care of their own health team. Sometimes the Appellants liaised directly with the individuals General Practitioner, in particular when there was a need for urgent medical intervention.

9. Sometimes as a consequence of the work carried out in respect of at risk children, it was necessary for Dr Duncan to attend Court and give oral evidence.

10. The Appellants representative said that it was not clear whether payment for attendances and medical reports should be standard rated or whether they were exempt under Group 7 of Schedule 9 VAT Act 1994. The Appellant's representative claimed that in his view, these activities were exempt supplies. He pointed out that the primary purpose of the work undertaken by Dr Duncan was the 'protection, maintenance or restoration' of the health of the 'at risk' child, and therefore the supply should be exempt in accordance with the guidance set out in the VAT Health Manual. The Appellants representative requested a ruling on the issue.

11. On 16 August 2011, after liaising with the HMRC's VAT Policy Unit, the HMRC officer dealing with the matter said that:

> "VATHLT2300 of the VAT Internal Guidance acknowledges that psychiatrists are registered medical practitioners which make their services potentially exempt under item 1(a) to Group 7. The conditions for exempting services supplied by health professionals are set out at paragraph 2.3 in the VAT Notice 701057 - Health professionals. They are:
>
> > '1. The services are within the profession in which you are registered to practice.
> >
> > 2. The primary purpose of the services is the protection, maintenance or restoration of the health of the person concerned.'
>
> The European law vires for exempting medical care under item 1 of Group 7 is Art 132 (1) (c). This states that -
>
> > 'Member States shall exempt the following transactions:
> >
> > (c) The provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned.'
>
> The ECJ in the case of *Dornier* ((20031 EUECJ C-40) held that the "provision of medical care" in what was then Art 13A (1) (c) of the VAT Sixth Directive (now Art 132(1) (c) of the PVD) must have as its purpose the diagnosis, treatment and, in so far as possible, cure of the diseases or health disorders (para 48 of the judgment refers).

> Further, the ECJ in the case of *PL dArnbrumenil and Dispute Resolution Services* (C-307/01) held that the VAT exemption afforded by Art 132(1) (c) is restricted to `medical care", which it defined as those services intended principally to protect (including maintain or restore) the health of an individual."

12. HMRC said that they interpreted those judgments as offering support for their policy position, that exemption for medical care is restricted to services whose principal purpose is the protection, maintenance and restoration of a person's health.

13. HMRC said that support for this position can be obtained from the ECJ in the case of *PL d'Ambrumenil*. The Court distinguished services consisting of the provision of advice at para 60.

> '60. As the Advocate General correctly pointed out in paragraphs 66 to 68 of her Opinion, it is a medical service which determines whether it should be exempt from VAT. Therefore, if a context in which a medical service is effected enables it to be established that its principal purpose is not the protection, including the maintenance or restoration, of health but rather the provision of advice required prior to the taking of a decision with legal consequences, the exemption under Article 13, 4 (1) (c) does not apply to the service'

14. HMRC say that the item on Children in Care featured in VATHLT2130, is restricted to examinations, and is intended to cover examination of at risk children. The item that best encapsulates the breadth of this service is medico-legal work. Table 3 refers the reader to Notice 701/57 - Health professionals for guidance on the liability of those activities. Paragraph 3.8 in the Notice advises that medico-legal work is standard rated.

15. In its letter to the Appellants of 16 August 2011, HMRC advised that the following supplies should be standard rated:

- Reports on the psychiatric assessments of the parents of at-risk children
- The Appellants attendance at court to give evidence in connection with the reports

16. The outcome of the ruling that the medico-legal work was standard rated was that Dr Duncan was required to be registered for VAT with an effective date of 1 December 2008 and she remained liable until 31 October 2009, when her business was transferred as a going concern to Bascgalliwhite Limited

17. On 15 November 2011 the Appellants representative submitted an application to register Dr Duncan for VAT with effect from 1 December 2008, an application to de-register Dr Duncan from VAT with effect from 31 October 2009, together with an application to register Bascgalliwhite Ltd for VAT with effect from 1 November 2009.

18. By way of the same letter the Appellants representative explained that the reason for the late registration was caused by a misunderstanding of the application of

the VAT exemption to certain medical services. The representative did not question or dispute the Appellants liability to output tax, in respect of her medico-legal work.

19. Before the Appellants notified HMRC of their liability to register for VAT, fee invoices had been issued to clients without charging VAT. At the time that the invoices were issued, because the Appellants believed that their services were not chargeable to VAT, the clients paid the invoices issued in full.

20. By letter dated 9 January 2012 HMRC requested completion of a final VAT return from Dr Duncan for the period 1 December 2008 to 31 October 2009.

21. On 16 January 2012 HMRC requested completion of a VAT return by the company, for the period from 1 November 2009 to 21 December 2011 and issued a Belated Notification Penalty (BNP) form for the Appellants to complete. HMRC advised that outstanding tax was due whether or not it had been charged to customers.

22. On 09 February 2012 the Appellants representative replied to HMRC asking for guidance on completing the relevant forms, saying :

> 'It is our client's intention to seek to recover VAT which should have been charged to her clients, by means of VAT only invoices. If she is successful in this respect then the VAT to be reported in her returns from the date of the effective registration, will be on the basis of applying the relevant VAT rate to the amounts previously invoiced without VAT. However it may be that in some cases she is not able to charge the VAT now. This may be a matter of contract law between the parties and may take some time to resolve. Where, under the terms of a contract with clients, any VAT cannot now be billed to them, the VAT to be included in the returns ought to be on the basis of the appropriate VAT fraction applied to the previous invoices. Similarly, where VAT is legally billable to clients now, but for whatever reason a client does not pay, VAT bad debt relief would be due.'

By way of the same letter the Appellants representative enquired whether, in view of the circumstances, estimated VAT returns could be submitted

23. On 23 February 2012 HMRC confirmed that estimated returns could be submitted. The Appellants applied for a VAT registration and following registration, submitted VAT returns to HMRC.

24. The Appellants then attempted to issue VAT only invoices to their clients. As most of the cases were old and clients had already paid what they considered to be a final fee for the work, they were not prepared to pay any additional amounts. Only £7,485.47 of the VAT, which should originally have been charged, was recovered leaving £48,326 as irrecoverable.

25. On 2 March 2012 the company was notified of its liability to a civil penalty for the failure to notify HMRC of the liability to be registered from 1 November 2009 to 21 December 2011. The letter confirmed the penalty would be calculated at 15% of the net tax due for the period of liability to be registered. Mitigation was given thereby reducing the penalty to £5,427.00 and subsequently amended to £6,579.00.

26. On 3 July 2012 Dr Duncan was notified of her liability to a civil penalty for the failure to notify HMRC of the liability to be registered from 1 December 2008 to 21 December 2011. The letter confirmed the penalty would be calculated at 15% of the net tax due for the period of liability to be registered. Mitigation was given thereby reducing the penalty to £198.00.

27. The belated notification penalties are not in dispute.

28. On 28 November 2012 HMRC notified the Company that a VAT assessment would be issued, totalling £55,811, based upon the output tax figure declared on its completed BNP. HMRC said that they intended to raise an assessment based on the net sales (money actually received from customers) and would treat this amount as if it were VAT inclusive.

29. On 11 December the Appellant's representative replied to HMRC to the effect that they wished to make a Bad Debt Relief claim on those invoices for which the Appellants had not been able to recover VAT from their clients. They said:

> 'It is clear that in these cases the client has paid the net amount in full (as it is the net amount which was originally invoiced) and therefore the amount remaining unpaid is wholly attributable to the VAT element which has been separately invoiced. On this basis no VAT will be due from our client.'

30. HMRC explained that they were unable to accept the claim that the full amount of output tax due should be dealt with as a bad debt claim. The guidance in Public Notice 700/18 section 3.13 states that:

> 'If your customer refuses to pay the VAT charged, or you did not charge when the supplies were made but issued supplementary invoices to recover the VAT from your customer, the claim to relief is limited to the VAT element of the total debt.'

31. HMRC further advised that bad debt relief allows a business to claim a refund of the output tax they have paid to HMRC when they do not receive payment from their customers. For example if a company originally charged £100 which its customer paid, and it unsuccessfully attempted to recover the £20.00 VAT charge originally omitted, the company is only entitled to claim the VAT fraction of £20.00 as bad debt relief. The outstanding amount is treated as a VAT inclusive sum even if it comprises a VAT only invoice or the unpaid VAT element of an invoice.

32. HMRC referred to the Tribunal case of *Enderby Transport Ltd*, MAN/83/304 where the company sold goods for £10,200 plus VAT of £816, i.e. for a consideration of £11,016. The customer only paid £10,200 and the company claimed bad debt relief of £816, the full amount of the VAT, on the outstanding amount of the supply. Bad debt relief is limited to the tax chargeable by reference to the outstanding amount of the consideration payable for the supply. In this case the consideration for the supply was £11,016, and the outstanding amount is £816. As a result the bad debt relief is limited to the tax chargeable calculated on £816.The Tribunal held that the outstanding debt of £816 should be treated as a gross debt and that only the VAT element of 3/23rds of the debt (i.e. £106.43) was eligible for bad debt relief. The

decision in *Enderby Transport Ltd* was applied in similar cases, for example *WP Holdings PLC*, MAN/96/995.

33. HMRC further advised that a refund can only be claimed when all the conditions have been met. The VAT legislation applicable to bad debt relief is s 36 VAT Act 1994 and The VAT Regulations S11995/2518 Part XIX. In order to claim bad debt relief the following conditions must be met

- You must have already accounted for and paid the tax being reclaimed to HMRC via a VAT return or VAT assessment.
- You must have written off the debt in your day to day VAT accounts and transferred it to a separate bad debt account.
- The debt must have remained unpaid for a period of six months after the later of the time payment was due and payable and the date of the supply.

34. HMRC referred the Appellants to VAT Regulation 165 (S11995/2518), which says that a claim means a claim, in accordance with VAT Regulations 166 and 167, for a refund of VAT to which a person is entitled by virtue of s 36 of the Act. VAT Regulation 167 (b) requires the company to have accounted for and paid the VAT, which is the subject of the claim being made. In this instance HMRC contend that, for example, the Appellants had not been able to recover an amount of £48,326 VAT from its customers and wished to claim bad debt relief for that amount. However, the Appellants had not paid the £48,326 VAT to HMRC and therefore, having not satisfied the requirement of VAT Regulation 167(b), it had not met the conditions for making a bad debt claim and HMRC could not accept the Appellants claim.

35. In a letter dated 12 February 2013, the Appellants representative referred to the Upper Tribunal decision in *Simpson & Marwick v Revenue and Customs Commissioners* [2011] HKUT 498 (TCC) BVC 4533, in support of its contention that the Appellants were entitled to claim all of the £48,326 relating to the VAT only invoices issued by the Appellants.

36. HMRC responded that the *Simpson & Marwick* case was decided on facts specific to that case. The taxable person was a firm of solicitors providing legal services to insurance companies. VAT only invoices were issued on the basis of directions issued by HMCE in 1985 whereby the firm was obliged to (a) address tax invoices to the insurance policy holders who were registered for VAT, where those policy holders were entitled to claim the VAT charged as their input tax, who would pay the VAT amount to the firm and (b) send copies of the invoices to the insurers asking them to pay the balance of the invoice. Duplicate fee notes were issued in cases where the policyholders were registered for VAT and if payment was not made by the policyholders the firm would claim VAT bad debt relief. HMRC said that *Simpson & Marwick* could be distinguished on the facts and was decided on entirely different principles to those in the present appeal.

37. HMRC maintained that everything but the gross amount on the VAT only invoice had been paid by the Appellants customers. It is therefore the amounts due on the VAT only invoices for which the Appellants had not been paid that they may, subject to meeting the conditions for making a claim, be entitled to make a bad debt claim.

38. By letter dated 10 January 2013 HMRC notified Dr Duncan that a Notice of Assessment would be issued under separate cover for the period 1 December 2008 to 1 November 2009 reducing the amount due for the period by £2,160 to £12,704.17.

39. HMRC confirmed by letter on 20 February 2013 that the Appellant's representative had correctly identified that there had been no credit for input tax for the period of the company following which a revised Notice of Assessment was duly issued to the company revising the total tax due to £46,409.00.

The Relevant Legislation

40. The VAT Act 1994

"36 Bad debts

(1) Subsection (2) below applies where -

(a) A person has supplied goods or services. . and has accounted for and paid VAT on the supply

(b) the whole or any part of the consideration for the supply has been written off in his accounts as a bad debt, and

(c) a period of 6 months (beginning with the date of the supply) has elapsed.

(2) Subject to the following provisions of this section and to regulations under it the person shall be entitled, on making a claim to the Commissioners, to a refund of the amount of VAT chargeable by reference to the outstanding amount.

[(3) In subsection (2) above "the outstanding amount" means -

(a) if at the time of the claim no part of the consideration written off in the claimant's accounts as a bad debt has been received, an amount equal to the amount of the consideration so written off;

(b) if at that time any part of the consideration so written off has been received, an amount by which that part is exceeded by the amount of the consideration written off

and in this subsection "received" means received either by the claimant or by a person to whom has been assigned a right to receive the whole or any part of the consideration written off.]

[(3A) For the purposes of this section, where the whole or any part of the consideration for the supply does not consist of money, the amount in money that shall be taken to represent any non-monetary part of the consideration shall be so much of the amount made up of—

(a) the value of the supply, and

(b) the VAT charged on the supply,

as is attributable to the non-monetary consideration in question.]

(4) A person shall not be entitled to a refund under subsection (2) above unless—

(a) the value of the supply is equal to or less than its open market value, . . .

(b) . .

[(4A) .]

(5) Regulations under this section may—

(a) require a claim to be made at such time and in such form and manner as may be specified by or under the regulations;

(b) require a claim to be evidenced and quantified by reference to such records and other documents as may be so specified;

(c) require the claimant to keep, for such period and in such form and manner as may be so specified, those records and documents and a record of such information relating to the claim and to [anything subsequently received] by way of consideration as may be so specified;

(d) require the repayment of a refund allowed under this section where any requirement of the regulations is not complied with;

(e) require the repayment of the whole or, as the case may be, an appropriate part of a refund allowed under this section [where any part (or further part) of the consideration written off in the claimant's accounts as a bad debt is subsequently received either by the claimant or, except in such circumstances as may be prescribed, by a person to whom has been assigned a right to receive the whole or any part of that consideration;]

(f) include such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section;

(g) make different provision for different circumstances.

6) The provisions, which may be included in regulations by virtue of subsection (5)(f) above may include rules for ascertaining—

(a) whether, when and to what extent consideration is to be taken to have been written off in accounts as a bad debt;

(b) whether [anything received] is to be taken as received by way of consideration for a particular supply;

(c) whether; and to what extent, [anything received] is to be taken as received by way of consideration written off in accounts as a bad debt.

(7) The provisions which may be included in regulations by virtue of subsection (5)(f) above may include rules dealing with particular cases, such as those involving [receipt of part of the consideration] or mutual debts; and in particular such rules may vary the way in which the following amounts are to be calculated—

(a) the outstanding amount mentioned in subsection (2) above, and

(b) the amount of any repayment where a refund has been allowed under this section.

(8) Section 6 shall apply for determining the time when a supply is to be treated as taking place for the purposes of construing this section."

VAT Regulations 1995

Evidence required of the claimant in support of the claim

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Save as the Commissioners may otherwise allow, the claimant, before he makes a claim, shall hold in respect of each relevant supply—

(a) either -

(i) a copy of any VAT invoice which was provided in accordance with Part Ill of these Regulations, or

ii). where there was no obligation to provide a VAT invoice, a document which shows the time, nature and purchaser of the relevant goods and services, and the consideration therefor,

(b) records or any other documents showing that he has accounted for and paid the VAT thereon, and

(c) Records or any other documents showing that the consideration has been written off in his accounts as a bad debt."

Appellants Case

41. The stated grounds of appeal in the Appellants notice of appeal were:

> 'The taxpayer made an honest mistake in not charging VAT on its supplies of psychiatric services in respect of medico-legal work. Supplies of psychiatric services to patients are exempt and for this reason the taxpayer did not believe that any VAT was due and that VAT registration was not required. Following

professional advice, the view of HMRC was sought and it was agreed that VAT registration should have taken place and VAT charged on supplies.

A part of the taxpayer's business involves taking instructions from solicitors to prepare psychiatric reports on individuals for the purpose of Court proceedings. The charges of these are billed to solicitors and charged to the individuals, almost all of whom are funded by legal aid. Following VAT registration, attempts were made to recover the previously uncharged VAT by issuing VAT only invoices to the relevant solicitors. In a few instances the solicitors paid these and those amounts have been paid over to HMRC. In most cases (sic) however (sic) the solicitors have closed the relevant case files and completed their returns to the relevant Legal Aid Board. We understand that it is not possible for these files to be reopened and for the Legal Aid Board to now pay the VAT due.

If the taxpayer is now required to pay the VAT, this will result in an unjust enrichment to the State. If the VAT had been paid by the Legal Aid Board and then paid over to HMRC the position of the State would be neutral as tax revenues fund the Legal Aid Board. The VAT would have flowed in a circle with no net cost to anyone. If HMRC is now to collect the VAT from the taxpayer the cost will fall on the taxpayer and the State will be better off by the amount of VAT collected. This would constitute an unjust enrichment and it would be at the expense of the taxpayer.'

42. At the hearing, Mr Adams for the Appellants said it is clear that the services provided by the Appellants constituted a mixed supply. When it became known that work undertaken in respect of medico-legal services should have been standard rated for VAT purposes, Dr Duncan took a pragmatic view, and despite the fact that part of work was clearly exempt, registered for VAT and issued VAT invoices for the total amount of services without identifying the exempt services. What she did not know was that the Legal Aid Authority could refuse to pay VAT which was properly due but which had not been charged on the original invoices.

43. Dr Duncan gave evidence to the Tribunal. She said that she had been a specialist consultant psychiatrist for 15 years undertaking mainly medico-legal work for the Courts. The reports she prepares normally consist of risk assessments and recommendations, which are made after speaking to the parents of at risk children and their GPs. The reports are passed to the GPs and are designed to assist in the management of a child's welfare.

44. Dr Duncan said that she very often acts as a clinician in making recommendations to GP, which was entirely outside the context of providing a report for the Courts. She is often asked to expand on her report so as to assist with decisions regarding treatment. To that extent her work had a dual purpose. She said that 60% of work related to preparation of the Court reports and the other 40% related to work making an assessment and providing a diagnosis which then led to a treatment plan. Dr Duncan said that she was often consulted for an independent second opinion and

that in a typical case she would render three invoices, one to the solicitors who instructed her, a second to the local authority and a third to the parents of the child.

45. Mr Adams said that strictly speaking, 40% of the Appellants work was exempt and not chargeable to VAT. The Appellants, when providing invoices, now keep detailed timesheets and distinguish between the different types of work undertaken, but in practice, all of the Appellants services are still charged out at the standard rate. Mr Adams said that when Dr Duncan's representative first approached HMRC for confirmation of the VAT status of her medico-legal work, it should have been argued that this consisted of a mixed supply. The fact that this did not happen was an error. At that time they did not foresee any difficulty recovering VAT on invoices that should have been standard rated.

46. Whilst conceding that although the Appellants exempt and standard rated services had not been separately identified and invoiced, it was nonetheless unfair that one government funded authority, the Legal Aid authority, was able to refuse to pay VAT on services which were standard rated, whilst HMRC, another government department, could demand payment of VAT which the Appellants had not received. The end result was unjust enrichment to the State at the expense of the Appellants.

HMRC's Case

47. With regard to the VAT assessments, Mr Haley for HMRC, said that s 36 of the Act and Regulation 167 of the VAT Regulations are relevant to determine the appeal in that the Appellants have not accounted for and paid the VAT on the supplies. Subject to their arguments as to unjust enrichment, the Appellants concede that the assessments have been properly calculated.

48. The mis-declaration penalties were not under appeal.

49. Mr Haley said that it is not material to this appeal how the Appellants customers are funded or that the Legal Aid Authority refused to pay VAT on legal aid cases which had been closed. The concept of unjust enrichment would relate to a refund or credit of over declared output tax and is thus not material to this appeal.

50. The Notices of Assessment issued are based on the VAT inclusive value of the sales, which confers the same relief. The gross value of the supply is the value of the consideration that is given for it and consequently the assessments have been correctly calculated and made. It is unambiguous that if VAT was not charged when the supplies were made and supplementary VAT only invoices issued, the claim to bad debt relief is limited to the VAT element of the total debt remaining unpaid.

51. Mr Haley said that the onus rests with the Appellants. The standard of proof is the ordinary civil standard, that is, the balance of probabilities. The Appellants had not discharged the obligation to show why HMRC should not refuse the Appellants' claim that unpaid supplementary invoices should be subject to full relief from VAT or why HMRC should not assess the Appellants pursuant to s 73 of the Act, on their VAT inclusive services for the periods in question.

Conclusion

52. Where Dr. Duncan's hospital attendances were to provide psychiatric assessment, or treatment and care to patients, the Appellants were supplying medical care, and such activities were exempt. However, where Dr. Duncan attended at Court to give evidence, those activities did not amount to medical care and therefore were properly regarded as standard rated by HMRC, as those services did not involve an 'examination' or the 'protection, maintenance or restoration of health'.

53. The primary purpose of the Appellants services was not to dispense medical care but to assist a decision of the Court as to the suitability of the child returning to the parental home. It was not the diagnosis, treatment and application of medical services to assist in the restoration of the health of the children or parents concerned. The Appellants services therefore did not fall within the exemption afforded by Group 7 of Schedule 9 of the Act and are standard rated.

54. With regard to the Appellants claim for bad debt relief, if a customer refuses to pay the VAT charged, or as in this case the Appellants did not charge VAT when the supplies were made, but subsequently issues supplementary invoices to recover the VAT, the claim to relief is limited to the VAT element of the total debt, not the total amount invoiced. In any event the Appellants must have already accounted for and paid the tax being reclaimed to HMRC via a VAT return or VAT assessment. This Appellant had not paid the VAT to HMRC.

55. We agree with HMRC that there has been no unjust enrichment to the State. VAT has not been wrongly paid to HMRC. The fact that the Legal aid Authority has not paid VAT on services, which should have been standard rated, is not relevant. In circumstances where VAT has been paid on services which are subsequently found to be exempt, a claim to a refund of output tax may succeed, but the VAT repaid would have to be reimbursed to the taxpayer customer. Indeed any repayment to the trader, which was not to be repaid to the customer, would be unjust enrichment of the Appellants.

56. For the above reasons HMRC's decisions to refuse the Appellants claim that unpaid supplementary invoices should be subject to full relief from Value Added Tax on bad debts and, to assess the Appellants pursuant to s 73 of the Act for the VAT inclusive value of the sales during the periods for which the Appellant was liable are upheld.

57. For the above reasons the appeal is dismissed.

58. 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.

MICHAEL S CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 7 November 2014