



TC05013

Appeal number: TC/2014/05429

VALUE ADDED TAX – zero rating – whether mobile timber structures supplied are “caravans” within item 1 Group 9 Schedule 8 VATA 1994

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THERMO TIMBER TECHNOLOGY LIMITED Appellant

- and -

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

**TRIBUNAL: JUDGE VICTORIA NICHOLL
 SANDI O’NEILL**

Sitting in public at Royal Courts of Justice on 7 March 2016

There was no appearance by or on behalf of the Appellant

Ms Sharon Spence, HMRC presenting officer, for the Respondents

DECISION

Introduction

1. This is an appeal against a decision of the Respondents (“HMRC”) that supplies
5 of mobile timber frame structures by the Appellant, Thermo Timber Technology Limited, (“TTT”) in the periods 02/2014 and 03/2014 should not have been zero rated but standard rated. This resulted in an assessment in the sum of £10,124.32 for the VAT period 02/14 and a reduction of the VAT credit due for the VAT period 03/14.

2. There was no appearance by or on behalf of TTT. TTT’s representative, Mr
10 Stephen Howard of the VAT People Limited, had notified HMRC and the tribunal service on 22 February 2016 that the firm no longer represents TTT and would not be attending the hearing. Mr Howard told Ms Spence by email that he had informed Mr Andrew Parker, operations manager of TTT, of the hearing date on 16 February 2016. HMRC contacted Mr Parker on the three business days prior to the hearing and on the
15 morning of the hearing to determine who would be attending the hearing on TTT’s behalf. Mr Andrew Parker did not advise the callers, or respond to messages from the tribunal service, to advise whether a representative of TTT would attend the hearing.

3. We considered rules 33 and 2 of the Tribunal Procedure (First-tier) (Tax Chamber) Rules 2009 in the light of these facts and concluded that TTT had received
20 adequate notice of the hearing, and that although it would have been preferable to have representation by or on behalf of TTT, it was in the interests of justice to proceed with the hearing in its absence.

The facts

4. The evidence in the tribunal bundle included a statement by Mr Parker and
25 correspondence from TTT, its accountant and the VAT people, its representative until shortly before the hearing. The bundle also included copies of planning applications for the mobile timber structures the subject of this appeal. We heard no live evidence. From the evidence we found the following facts:

5. TTT supplies mobile timber structures and eco houses to order. Its clients range
30 from schools buying classrooms to Hoseasons buying mobile holiday homes. We understand that TTT purchases the timber frames from Vision Developments (South) Limited (“Vision”) and adapts these according to the clients’ specifications. The majority of each building is prefabricated off site to the client’s design for the accommodation and the structures are assembled and completed by TTT on site.

6. Each of the three supplies, which are the subject of this appeal, was to a local
35 authority school and subject to a planning application. In the case of the supply to Spring Grove School, the planning application was made by TTT and was for a “timber framed building to replace the existing porta cabin for use as a music room”. In the case of both Leyland Methodist Infants School and Cobbs Brow Primary
40 School the relevant planning application was submitted by Lancashire County Council for the erection of a “modular building to provide nursery accommodation”. We refer to these three supplies which are the subject of this appeal as “the three structures”.

7. TTT is registered for VAT. The supplies from Vision to TTT are subject to VAT at the standard rate. TTT sought advice from HMRC about the VAT treatment of its supplies of mobile homes from time to time as it was known to be an issue. TTT's webpage notes that "certain buildings are zero-rated for VAT making a saving of 20% on normal build prices." TTT submits VAT returns on a monthly basis. Mr McCullough of MMC Chartered Accountants deals with the company's day to day financial matters and VAT.

8. On 17 April 2014 HMRC contacted Mr McCullough to carry out routine credibility checks on VAT returns submitted for the periods 02/14 and 03/14. HMRC queried the zero-rating of the supply of the mobile classrooms to the schools in these periods. There was then an exchange of correspondence between HMRC and TTT, with HMRC issuing its final decision in a letter dated 12 June 2014. TTT requested a review of this decision on 3 July 2014. HMRC undertook a review that concluded, by letter dated 11 September 2014, that the decision should be upheld. TTT appealed against the decision.

9. As noted in paragraph 1 above, the decision resulted in an assessment for the period 02/14 under section 73(1) Value Added Tax Act 1994 ("VATA") and a reduction of the VAT credit for the period 03/14 under section 25(3) VATA. Both the assessment and the reduction of the VAT credit were made on the basis of the relevant supplies being treated as VAT inclusive amounts. TTT applied for its appeal to be heard without accounting for the VAT because of hardship. Mr McCullagh wrote a letter in support of this application dated 3 December 2014 which stated that the three structures were supplied to local authority schools that "would be in a position to pay the VAT if requested due to a court decision against Thermo Timber Technology Limited". HMRC accepted the application.

The law

10. Section 30 of the Value Added Tax Act 1994 ("VATA") provides for zero-rating as follows:

"(1) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section—

- (a) no VAT shall be charged on the supply; but
- (b) it shall in all other respects be treated as a taxable supply;

and accordingly the rate at which VAT is treated as charged on the supply shall be nil.

(2) A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified."

11. Group 9 of Schedule 8 VATA ("Group 9") provides for the zero-rating of supplies of caravans and houseboats if they come within one of the following items:

“1. Caravans which exceed the limits of size of a trailer for the time being permitted to be towed on roads by a motor vehicle having a maximum gross weight of 3,500 kilogrammes and which—

5 (a) were manufactured to standard BS 3632:2005 approved by the British Standards Institution, or

(b) are second hand, were manufactured to a previous version of standard BS 3632 approved by that Institution and were occupied before 6 April 2013.”

10 2. Houseboats being boats or other floating decked structures designed or adapted for use solely as places of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion.

3. The supply of such services as are described in paragraph 1(1) or [5(4)] of Schedule 4 in respect of a caravan comprised in item 1 or a houseboat comprised in item 2.

Note:

15 This Group does not include—

(a) removable contents other than goods of a kind mentioned in item 4 of Group 5; or

(b) the supply of accommodation in a caravan or house boat.”

20 12. Group 5 of Schedule 8 VATA (“Group 5”) provides for the zero-rating of certain supplies of buildings constructed or converted for use as dwellings or solely for a relevant residential or a relevant charitable purpose. Item 4 of Group 5 provides for the zero-rating of the supply of building materials to a person to whom the supplier is supplying the construction or conversion services within Group 5 which include the incorporation of the materials into the building (or its site) in question.

25 12. Section 29 (1) of the Caravan Sites and Control of Development Act 1960 (“the Caravan Act”) defines “caravan” for the purposes of Part 1 of the Caravan Act as follows:

30 ‘ “caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...”

This definition of “caravan” is adopted for the purposes of the Caravan Sites Act 1968 subject to the amendment relating to twin-unit caravans in section 13 which provides as follows:

35 “ (1) A structure designed or adapted for human habitation which –

(a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and

5 (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),

shall not be treated as not being (or as not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a road when assembled.

10 (2) For the purposes of Part 1 of the Caravan Sites and Control of Development Act 1960, the expression “caravan” shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely –

15 (a) Length (exclusive of any drawbar): 20 metres;

(b) Width: 6.8 metres;

(c) Overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level: 3.05 metres.”

20 **Submissions**

13. TTT submits that the supply of the three structures should be zero-rated as they satisfy the requirements of item 1 Group 9. It submits that this is the case because each structure meets all of the following conditions for zero-rating:

25 (1) It must qualify as a “caravan”. The definition of “caravan” in the Caravan Act as amended by the Caravan Sites Act 1968 is adopted by TTT in its submissions. TTT submits that the caravans are capable of being moved and meet the size and construction tests.

(2) It must meet the size and weight tests in the Caravan Sites Act 1968 and Group 9 Schedule 8 VATA.

30 (3) It must be manufactured to standard BS 3632:2005 approved by the British Standards Institution as specified in Group 9 Schedule 8 VATA. TTT refer to paragraph 3 of VAT information sheet 04/13 in support of its appeal as it includes a statement that “following consultation we decided that the best way of distinguishing between residential and non-residential caravans is to base the distinction on the single test of whether they meet
35 BS 3632 or not”.

14. TTT submits that the use to which a caravan is put by the client is irrelevant in determining the VAT treatment of the supply. This is confirmed in the 1993 case of *Michael John Rooke v Customs and Excise* VAT Decision number 9819.

40 15. HMRC submit that the supplies of the three structures do not meet the definition of a “caravan”. There is no definition of “caravan” in VATA. HMRC base their interpretation on the definitions in the Caravan Act and the Caravan Sites Act 1968 as

5 this is the most common reference to a definition of “caravan” in other legislation and would be the definition as understood by ‘the man in the street’. HMRC submit that while the structures are capable of being moved and have been fitted with toilet and kitchen facilities, they are designed and configured as classrooms as contracted for by the customer and as set out in the planning applications. They were not been designed for human habitation and do not share the attributes of a dwelling, such as sleeping areas.

10 16. HMRC submit that the underlying purpose of item 1 Group 9 is to provide zero-rating for residential caravans on similar terms to that available in respect of residential accommodation in Group 5 if the caravans are designed or adapted for the same purpose of human habitation. This is supported by the fact that the drafting of both Groups excludes removable contents other than those of a kind ordinarily installed by builders as fixtures in houses. HMRC submit that the structures supplied by TTT cannot be equated to a house or dwelling and are not within the purpose of the legislation. They would not come within Group 5 if they were new constructions and should not come within Group 9.

Discussion

20 17. In order to qualify for zero rating the supplies of the three structures must be of “caravans” that (i) satisfy the size and weight conditions referred to in item 1 Group 9 VATA; and (ii) are manufactured to the standard BS 3262:2005. The parties agree that both conditions (i) and (ii) are satisfied in relation to the structures supplied and that the issue to be determined by the Tribunal is whether they are “caravans” for the purposes of item 1 Group 9 VATA.

25 18. We note that both TTT and HMRC have adopted the definition of “caravan” in the Caravan Act subject to the amendments in the Caravan Sites Act 1968. We accept that the language used in this definition of a caravan as “any structure designed or adapted for human habitation which is capable of being moved from one place to another” reflects its meaning in ordinary everyday English usage. It is not however appropriate to adopt the definition in full as the more detailed provisions (for example about assembly and size) are relevant for the purposes of that legislation but do not add anything in terms of the interpretation of item 1 Group 9.

30 19. We also respectfully agree with Judge Brooks’ purposive approach when considering the meaning of “caravan” in *The University of Kent v Customs and Excise* [2004] UKVAT V18625 as follows:

35 “In the absence of any definition of [caravan] anywhere within [VATA], external tests must be used to establish its purpose and scope. The word cannot be automatically be construed as it is for the purposes of other legislation; the purpose of the reference within [VATA] requires to be examined.”

40 20. We note in this respect that the purpose of the zero-rating was described in the notes to the Finance Act 1972 to be to give residential caravans the same relief as houses. This is reflected in the drafting of Group 9 and Group 5 Schedule.

21. On this basis we consider that the question for the Tribunal is whether these three structures supplied by TTT were designed or adapted for human habitation, meaning that they are equipped with facilities for use as residential caravans. HMRC accept that the structures are capable of being moved from one place to another.

5 22. We accept TTT's submission that the use to which the structures are put by the client has no bearing on whether they were designed or adapted for human habitation. The intended use by the client is however relevant in that each structure is completed to the client's design criteria and planning permission and it is this that determines whether it is for human habitation or, in this case, a classroom.

10 23. The planning applications for the two of the school structures include a statement that the proposal does not involve the gain or loss of residential units. The structures that TTT acquired from Vision for the onward supplies to the three schools were constructed as classrooms to the schools' design. The three structures could have been erected and configured as holiday homes for Hosesons or mobile homes for
15 individual buyers, but their design and adaptation would have been different. For example, the three structures include two or three adjacent toilets and wash basins for children to use, whereas a mobile or holiday home is more likely to have had a single toilet and either a single basin or a double basin. Similarly they do not include sleeping areas that would be included in a residential caravan.

20 24. In the circumstances of the supply of these three structures we find that TTT was contracted to construct and supply classrooms and not residential caravans. This reflects the design and adaptations required by the clients as set out in the planning applications and plans.

Decision

25 25. For the reasons set out above, we decided that the structures supplied were not "caravans" within Group 9 and were therefore not eligible for zero-rating. TTT is therefore liable to pay the assessment and the appeal is dismissed.

30 26. 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.

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**VICTORIA NICHOLL
TRIBUNAL JUDGE**

RELEASE DATE: 7 APRIL 2016

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