[2016] UKFTT 0563 (TC)

TC05312

Appeal number: TC/2014/04407

VALUE ADDED TAX – supply of a pack to assemble a wooden cabin – whether the supply is of a caravan – no – whether the supply is of a kit for a caravan – yes – whether a kit should be treated for the purposes of VAT as if it is the supply of the assembled item – yes – Betterways Panels Ltd. applied

FIRST-TIER TRIBUNAL
TAX CHAMBER

SCANDINAVIAN LOG CABINS DIRECT LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JANE BAILEY
MR WILLIAM SILSBY

Sitting in public at Centre City Tower, Birmingham on 9 May 2016

Mr Simon Bradshaw, counsel, for the Appellant

Mr Bruce Robinson, presenting officer, for the Respondents

DECISION

Introduction

1. The Appellant's Notice of Appeal, filed on 11 August 2014, is against the Respondents' review decision, dated 29 May 2014, to uphold in principle (though reduce in amount through a revised calculation) an assessment to VAT made under Section 73(1) Value Added Tax Act 1994 ("VATA 1994"). That assessment was raised in respect of three occasions where the Appellant had supplied a "caravan kit" from which the recipient could assemble a wooden cabin.

Permission to appeal out of time

2. The Appellant's appeal to this Tribunal was filed approximately two and a half months after the relevant review decision. Therefore as a preliminary point we had to consider whether to admit this appeal out of time.

3. Mr Mark Barber, the Appellant's sole director, provided us with an explanation of some personal issues which he had experienced in 2014 and which, we accept, would have made it significantly more difficult for him to focus upon this appeal. Mr Robinson, on behalf of the Respondents, did not object to the Appellant being given permission to appeal out of time.

4. We decided, applying the principles in *Data Select v HMRC* [2012] UKUT 187 (TCC), that the Appellant's appeal should be admitted out of time. We notified this decision to the parties at the beginning of the substantive hearing.

The dispute

5. The dispute between the parties was whether the Appellant's supply of a "caravan kit" should be zero-rated, as submitted by the Appellant, or standard-rated, as submitted by the Respondents.

6. In brief, each "caravan kit" supplied by the Appellant consisted of a pack (to use a neutral description) of timber pieces which could be used to construct a wooden cabin. It was agreed by the parties that where the pack was supplied together with installation by the Appellant then the assembled wooden cabin was a "caravan" for the purposes of Group 9 of Schedule 8 to VATA 1994, and that the supply should be zero-rated. The only issue was whether the supply of the pack, without installation by the Appellant, should also be zero-rated.

The Appellant's submissions

7. The Appellant submitted that when what was supplied was a complete set of pieces to assemble a wooden cabin, this constituted a kit for caravan. Mr Bradshaw submitted that the supply of a kit to construct an item should be distinguished from the supply of general parts which could be used in the construction of an item.

8. Mr Bradshaw submitted that *Customs & Excise Commissioners v Jeffs and another (t/a J & J Joinery)* [1995] STC 759, relied upon by the Respondents in their Statement of Case, was not binding upon us and was distinguishable.

9. Mr Bradshaw referred us to High Court decision in *Betterways Panels Ltd v Commissioners of Customs and Excise* [1964] 1 All ER 948, and noted that this was reported (some significant time after the hearing of the case) at the request of the Commissioners. *Betterways* concerned a kit sold for a specific purpose, and the High Court made the distinction between a kit of parts and parts sold generally. Mr Bradshaw also referred us to *Commissioners of Customs and Excise v Kewley* [1965] 1 WLR 786, a decision of the Court of Appeal. As both *Betterways* and *Kewley* referred to purchase tax and were decided prior to the introduction of VAT in 1973, Mr Bradshaw also referred us to *Marshall Cavendish v Commissioners for Customs and Excise* [1973] VATTR 65 where, he submitted, the principle in *Betterways* appeared to have been accepted.

10. Mr Bradshaw concluded that it would be artificial to distinguish between the supply of a kit and the supply of a whole item, and the evidence here supported the Appellant's submission that what was supplied was a kit for a caravan.

11. In reply to the Respondents' arguments, Mr Bradshaw submitted that the pack the Appellant supplied contained virtually everything which was required to assemble a caravan. While it might be necessary to undertake some minor snagging work, that did not prevent what was supplied from being a kit specifically supplied for assembly into a cabin of a particular design and specification. Also, while it may have been HMRC advice that a building kit constituted a supply of goods, the Respondents were incorrect to apply that advice here as the appeal was not concerned with Group 5 but with Group 9. Finally, although the wording of Group 9 referred to caravans which "were manufactured", the materials supplied by the Appellant had been manufactured to the standards required, and therefore what was supplied was a kit for a caravan manufactured to the relevant standards to meet the requirements of Group 9.

The Respondents' submissions

12. The Respondents' submission was that, in accordance with Section 30(2) of VATA 1994, a supply could be zero-rated only if it was of a description specified in Schedule 8. Mr Robinson accepted at the outset that the wooden cabin supplied by the Appellant, when supplied fully assembled, was a "caravan", and that fully constructed caravans were specified in Group 9 of Schedule 8 and should be zero-rated. The definition of "caravan" used by the Respondents was that set out in the Caravan Sites and Control of Development Act 1960, along with the definition of a "twin-unit caravan" set out in the Caravan Sites Act 1968.

13. Mr Robinson submitted that the Appellant's pack to build a wooden cabin was, in essence, the supply of materials, and the supply of building materials should be standard rated. Although Group 9 provided for the zero-rating of caravans, Mr Robinson submitted that the supply of materials to build a caravan did not meet the definition of a caravan.

14. Mr Robinson submitted that the dispute centred on a matter of statutory construction. He referred us to the wording of Group 9 and, in particular, the phrase "were manufactured" in relation to the caravans, which Mr Robinson argued must be interpreted as referring to the supply of a completely assembled item. Mr Robinson argued that if what was being supplied was in flat pack form then it was not a caravan but a supply of building materials.

15. Mr Robinson submitted that the same principles which applied to the construction of a building should also apply here. This was on the basis that caravans and houseboats, the subjects of Group 9, were zero-rated only because they provided accommodation and were considered to be dwellings. That linked them to buildings and the construction of buildings. Where house building kits were supplied then those kits were not zero-rated under Group 5 of Schedule 8 unless the kit was supplied along with construction services. Therefore, Mr Robinson submitted, a caravan kit ought to be treated like a house building kit, and treated differently from other kits. In the Respondents' supplementary bundle, Mr Robinson had provided us with a copy of VCONST02550 from the Respondents' Construction Manual which advised that the supply of a building kit on a supply and delivery only basis was not the supply of services in the course of construction of a building, and so the liability of the goods will follow the normal rules for the supply of building materials.

16. Mr Robinson concluded that the Appellant's supply did not meet the definition of a caravan, and so was not zero-rated under Group 9. Even if it was a kit, a kit which related to the construction of a building differed from other kits as it was implicit from the wording of Group 5 that the supply of goods in the course of construction of a building, without services, were excluded from zero-rating.

Facts found

17. We heard evidence from Mr Barber, the sole director of the Appellant, as to the history of his business and the nature of the cabin kit supplied. We found Mr Barber to be a truthful witness and we accept his evidence. On the basis of Mr Barber's evidence and the documents in the bundles before us, we find the following:

a) The Appellant company's business started in 2004. Initially the Appellant imported kit houses from Sweden. That import of kit houses continued until about 2011. When the Appellant had started in business, Mr Barber had been advised by HMRC on the VAT liability of kit homes and this advice was that kit homes should be standard-rated.

b) From 2011, following expressions of interest from mobile home owners in the UK, the Appellant began discussions with the Swedish company from which it imported the kit homes for the supply of packs to assemble wooden cabins which would qualify as caravans.

c) From 2011, the Appellant supplied a variety of models of wooden cabin which, when assembled, met the size and other requirements to qualify under planning regulations as a caravan. The Appellant also supplied

additional optional items for customers to order, such as decking which stood as a separate structure to a cabin, or upgrades, such as additional windows for a cabin.

d) The cabins sold by the Appellant were available both as a pack of pieces, and as a pre-assembled cabin. In either case a site survey would be undertaken prior to delivery to ensure that the cabin was appropriate to the proposed site.

e) The pack of pieces was cheaper to buy than the preassembled cabin. As well as the obvious costs of labour, the costs of transport were reduced when the cabin was supplied as a pack. When supplied as a flat pack, the pieces for one cabin could be transported on one articulated lorry. Two lorries would be required to transport each wooden cabin if it was delivered pre-assembled; those lorries would also require escorts due to the size of the structures being carried.

f) Mr Barber told us that in every case where the pack supplied was for a cabin which qualified as a "twin-unit caravan" then there was a stage in the construction where two separate units would be bolted together. Mr Barber told us the assembly process had to be meticulous in order to meet the planning regulations.

g) Mr Barber was unaware of any buyer purchasing a cabin pack and then selling it on pre-assembly although one buyer had sold on a cabin once it had been assembled. The need to ensure that the pieces which had been ordered for one site were appropriate for a new site, plus the logistics of reloading the pieces on to a lorry, made it unlikely that any purchaser would want to sell the unassembled pack. Mr Barber accepted it was possible that a caravan park owner could buy a number of cabin packs and sell on each pack to a customer.

h) Each pack of pieces supplied to a customer came in the form of several timber panels, each up to 4 metres long. The panels had been cut to measure and the floorboards cut to size. Special expansion joints were provided and insulation panels had been cut to fit within the expansion joints. The windows openings were cut in specific places in the panels so that the windows would slot in. The roof consisted of pre-cut purloins and rafters. The panels on the roof were pre-cut to coincide with the rafters. Once assembled the roof panels would be covered with felt or (as an optional extra) 1.5 metre wide steel panels. Each cabin would either be supported by a wooden chassis with piers or by a steel frame with wheels.

i) Special screws were provided in the pack if the customer had ordered steel panels. The buyer would provide his own standard nails or screws for the wooden panels. The windows were designed for caravans and whilst they met the relevant standards to be used as caravan windows, they would not meet building regulations as they were of a lighter construction. The

fittings for the cabin were generally provided by the customer but the Appellant could install these if required. We were shown one invoice which showed that the Appellant had constructed a built in wardrobe for one cabin as an additional supply; another invoice demonstrated that the Appellant had upgraded the internal walls of the cabin and supplied an additional window.

j) Some sawing would be required to build each cabin – Mr Barber told us that he would not build a cabin without a saw – but no drilling was required. The panels were joined by screws and the walls were wedged in place. The tools required to build a cabin would be a hammer, saw and screwdriver.

k) Mr Barber's estimation was that it would take 6-8 weeks, depending on the weather, to assemble a cabin from one of the packs. This included the plumbing and electrical work. Mr Barber estimated the amount of waste from offcuts to be about one skip's worth or "a good bonfire".

Decision

18. In deciding this appeal, we look first at what, as a matter of fact, is the item supplied. In determining what has been supplied we look at the item at the date of supply. We do not consider the item at the time that any subsequent assembly by someone other than the Appellant has been completed, and it has become clear what has been constructed (as is the case in planning law).

19. Here we consider that what is supplied is, as Mr Barber described, a number of pre-cut timber panels, expansions joints, pre-cut insulation panels, windows, pre-cut purloins, rafters and pre-cut roof panels. There may be additional pre-cut steel roof panels and special screws. The recipient of the supply can provide his own tools and ordinary screws and nails to assemble those pieces to construct a wooden cabin.

Is the supply of a caravan?

20. We consider first whether this pack of pieces is the supply of a "caravan" within the meaning of Group 9 of Schedule 8. The relevant part of Group 9 provides:

> *Group 9—Caravans and houseboats*
>
> Item No.
>
> 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—
>
> (a) were manufactured to standard BS 3632:2005 or BS 3632:2015 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.

21. As no definition of "caravan" is provided in Group 9, we turn to Section 29 of the Caravan Sites and Control of Development Act 1960 which defines a caravan as follows:

> "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, but does not include-
>
> (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or
>
> (b) any tent;

22. This definition should be read in in conjunction with Section 13 of the Caravan Sites Act 1968 which provides restrictions as to the maximum size of a caravan but also provides:

> (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
>
> (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed or being transported on a motor vehicle or trailer),
>
> shall not be treated as not being (or 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 highway when assembled.

23. We agree with the parties that the wooden cabin, when fully assembled, meets the definition of a caravan. However, we concluded that the pack of pieces to make a cabin, when supplied without installation, does not constitute a caravan. We take the view that an essential element of the definitions set out above is that a caravan is a structure. Therefore unassembled pieces cannot, before being put together, constitute a caravan. The reference to a twin-unit caravan being composed of not more than two sections, and the references to the maximum size of the structure, would be meaningless if this was not the case.

24. Although in *Brentnall v Erewash Borough Council* (2002) APP/N1025/C/01/1074589 (cited in earlier correspondence by the Appellant) the planning inspector determined that many pieces assembled on site constituted a

caravan, he had the advantage of making that assessment after the pieces which had been supplied had been assembled to form a caravan. We noted Mr Barber's evidence about the order in which the pieces are constructed to assemble the wooden cabins but this assembly takes place after the date of supply; we must make our determination at the date of supply.

25. We consider that the pack of pieces supplied by the Appellant is not, at the date of supply, a structure. We conclude that what is supplied is not a caravan.

26. The Respondents' submission was that, as the unassembled parts were not a caravan, the Appellant had made a supply of general building materials. Although in earlier correspondence between the parties the Appellant had focussed upon *Brentnall*, before us the Appellant's main submission was that there was a distinction between the supply of a kit to assemble a specific item and the general supply of parts which could be used to assemble that item. The Appellant's submission was that for VAT purposes, the supply of a specific kit should be treated as if it was the supply of the assembled item. We consider next this aspect of the Appellant's case.

Is the supply of a kit different to the supply of general parts?

27. The Appellant referred us to *Betterways Panels Ltd v Commissioners of Customs and Excise* [1964] 1 All ER 948. In *Betterways*, the plaintiff before the High Court was the manufacturer of a product called "self-assembly furniture". The plaintiffs sold different kits, each comprising of a number of laminated board panels and metal channels. The panels and channels could lock together to form various different designs of furniture. The panels and channels were also sold separately. In considering whether purchase tax was due on the kits as items of furniture Barry J held (at page 951D):

> As has been pointed out, purchase tax is imposed on the article which is said to be subject, or which is provided by the legislature to be subject, to tax, and I am quite satisfied that counsel for the commissioners is right when he says that liability to tax cannot be escaped if, instead of buying a complete and assembled article, one buys that article in parts. If one buys an article in parts, one is buying something quite different from what one buys when one goes to a shop and orders one or more parts of an article. There is a very broad distinction, and that distinction has already been admitted by the commissioners in this case when they have withdrawn their claim to purchase tax on the panels and metal channels which are sold in what has been described as unrelated quantities. If a bicycle is sold in parts, the essence of the transaction is the sale of a bicycle, albeit the sale of a bicycle in parts. I do not think it becomes any less the sale of a bicycle in parts because one isolated purchaser, or maybe more than one isolated purchaser, might by the exercise of ingenuity or for some other reason of his own decide to utilise those parts for some purpose other than the purpose for which they were sold … Here, as it seems to me, what an ordinary member of the public was buying and what the plaintiffs were selling was furniture in parts. It is true that it cannot be said that it was any particular article of furniture in parts. I have already indicated that the kit, in particular Kit No. 1,

was designed to enable a purchaser to make for himself some ten articles, and I am quite satisfied that each of those ten articles was an item of furniture. It does not seem to me that these kits are taken out of the liability to purchase tax because the commissioners are unable to say that the parts sold are, or the article of furniture sold is, not specified.

28. The Appellant noted that *Betterways* was applied in *Commissioners of Customs and Excise v Kewley* [1965] 1 WLR 786, a decision of the Court of Appeal which was also in relation to purchase tax, and referred to in *Marshall Cavendish v Commissioners for Customs and Excise* [1973] VATTR 65, a decision of the VAT Tribunal in relation to VAT. We are bound by decisions of the High Court and of the Court of Appeal.

29. *Betterways* was also cited in *Cheshire Mushroom Farm v Commissioners of Customs and Excise* [1974] 1 VATTR 87 where the VAT Tribunal considered a mushroom growing kit. The Tribunal concluded that the growing medium for the mushroom spawn was a required and essential part of the kit, and would be zero-rated, but that the packaging (a plastic bucket) was not a part of the kit and should be standard rated. The Tribunal seemed influenced by the large cost of the bucket, as a proportion of the whole cost, and by the fact that purchasers could make other use of the bucket once mushrooms had ceased to spawn.

30. Drawing together these authorities we conclude that where all the constituent parts to assemble an item are supplied together as a kit, then for the purposes of VAT that kit should be treated as if it is the complete assembled item. The provision of extraneous items makes it less likely that what is supplied is a kit but if extraneous items are supplied together with a kit then they do not form part of that kit.

31. We note that in some instances HMRC follow this approach of treating a kit containing all the relevant parts to assemble an item as if it is the fully assembled item for VAT purposes. For example, both the material for dress-making and dress-making patterns are standard rated. Yet, as set out in HMRC's Notice 714, a "cloth kit" (which consists of fabric cut into appropriately shaped pieces so that the purchaser can sew them into an item of clothing for children) is zero rated in recognition of the fact that it is a kit to make an item of children's clothing. However, in other instances HMRC seem to take the view that a kit should be treated differently from the complete assembled item. If a VAT registered trader buys a car then VAT is not recoverable, but if the trader instead buys a kit for a car then VAT will be recoverable. Indeed, in the case of a car, it seems that VAT is recoverable on the purchase of either a car kit or the constituent parts bought separately – see HMRC's Notice 700/64.

32. Having concluded that the Appellant is correct to argue that there is a distinction between the supply of a specific kit and the general supply of parts, we must consider whether what the pack supplied by the Appellant is a kit which contains all the relevant items to assemble a particular design of caravan, or simply building supplies from which, if the purchaser so chose, a caravan could be built.

Does the Appellant supply a kit?

33. The Appellant argues that what is supplied is a kit; the Respondents argue that the supply is of building supplies. Mr Robinson referred us to *Customs & Excise Commissioners v Jeffs and another (t/a J & J Joinery)* [1995] STC 759. In *J & J Joinery*, the taxpayers constructed bespoke roof timbers, windows, window frames, doors and door frames which were supplied for use in altering listed buildings. The work was undertaken by the taxpayers off site. The taxpayers delivered the completed timbers and frames but did not fit them. The Tribunal had held that the supply included construction services, and so should be zero-rated. This conclusion was reversed on appeal by Ogden J. who held that the supply was only of goods.

34. While we do not disagree with the conclusion reached in *J & J Joinery* we find it of limited assistance here. What was provided in *J & J Joinery* was an already finished and complete item, e.g. a door, which required installation into a building. By contrast, here what the Appellant provides are the materials to construct an item – the issue is whether the pieces supplied together are sufficiently self-contained and intrinsically linked to constitute a kit.

35. We have carefully considered the evidence provided as to the nature of what is supplied and conclude that what the Appellant supplies is a kit for a caravan and is not simply building supplies from which a caravan could be built. In reaching this conclusion we bear in mind the pre-cut nature of the panels supplied, the specific number of panels and pieces supplied, the lack of extraneous parts, the inclusion of special parts (the special screws for fixing the steel panels), and the relatively minimal offcuts and waste. Although there is likely to be a certain amount of snagging work required, we consider that to be almost inevitable in any construction or assembly, whether or not from a kit. We consider the Appellant's kit cabins to be in a similar position to the cloth kits set out in the Respondents Notice 714. In both cases it would be possible for a customer to use the pre-cut pieces for another purpose but in both cases it is highly unlikely that anyone would wish to do so.

36. Having determined that the supply by the Appellant is of a kit and not simply of building supplies, we conclude that following *Betterways* the supply of a kit for a caravan must be treated as the supply of an assembled caravan. Therefore the supply of a kit to assemble a caravan falls within Group 9 and is zero-rated.

Other arguments made

37. Mr Robinson endeavoured to persuade us that *Betterways* did not apply where the kit was for the construction of a building. We do not need to express an opinion on whether the enactment of Group 5 has the effect of implicitly superseding *Betterways* in relation to kits for buildings because the item in dispute here is a kit for a caravan, not a kit for a building. Caravans are structures designed for habitation but they are not buildings, and their portability makes them unlike buildings. While buildings are structures, not all structures are buildings.

38. Mr Robinson also submitted that the recipient of a caravan kit could potentially make a claim under Section 35 VATA 1994, as a self-builder, of the VAT charged to him on his caravan kit. We agree that a self-builder can potentially reclaim the VAT charged to him on materials used to build his home. However, that potential does not affect our conclusion in this case.

Conclusion

39. We conclude that the pack supplied by the Appellant is not a caravan but it is a kit for a caravan. Following *Betterways*, the supply of a kit should be treated as if it is a supply of the assembled whole for the purposes of VAT. As the supply of a caravan would be zero-rated under Group 9 of Schedule 8, the supply of a kit for a caravan should also be zero-rated under Group 9. Therefore the Appellant's appeal is allowed. The revised assessment in the amount of £15,150 is vacated.

40. 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.

JANE BAILEY

TRIBUNAL JUDGE
RELEASE DATE: 21 JULY 2016