TC05972

Appeal number: TC/2015/06137

VAT - claims for input tax, insufficient records to verify claim for repayment, HMRC entitled to exercise judgment and raise assessment. under s72(3)VATA, appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Pat Willis Eco Limited **Appellant**

- and -

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

TRIBUNAL: JUDGE GETHING
Member: Duncan McBride

Sitting in public at Fox Court, Court 12, 5th Floor, 30 Brooke Street, London EC1N 7RS on Monday 8 May 2017

The Appellant did not attend and was not represented

Anharul Qureshi, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. As neither the appellant not his representative was present we considered whether it was possible to conduct a fair hearing in the appellant's absence. We considered the Tribunal file and found copies of emails to the Appellant and the Appellant's adviser informing them of the date of the hearing. The Tribunal was unable to contact the Appellant's adviser but did make contact with Mr Williams, the director of the Appellant. Mr Williams said he was unaware that the hearing had been fixed rather he thought that dates were still being considered but asked that the hearing take place in the absence of the Appellant. Counsel for HMRC considered that he was able to inform the Tribunal of the Appellant's case. We decided to proceed and hear the case.

The Issue

2. The issue in this case concerns whether the Appellant has adduced sufficient evidence to justify its claim to input tax and a subsequent repayment of VAT. The periods under consideration are those ending 08/11 to 02/13 inclusive. HMRC consider the Appellant had secured repayments in excess of the input tax the Appellant was entitled to deduct and raised assessments in respect of those periods seeking repayment of VAT in the sum of £20,679.00.

3. The relevant legislative provisions are as follows:

Section 73(1) and (2) VAT Act 1994

(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify him.

(2) In any case where, for any prescribed accounting period, there has been paid or credited to any person-

(a) as being a repayment or refund of VAT; or

(b) as being due to him as a VAT credit

an amount which ought not to have been so paid or credited, or which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly.

Regulations 29 (1) VAT Regulations 1995

(1) Subject to paragraph (1A) below, and save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming

deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable save that, where he does not at that time hold the document or invoice required by paragraph (2) below, he shall make his claim on the return for the first prescribed accounting period in which he holds that document or invoice.

(1A) Subject to paragraph (1B) the Commissioners shall not allow or direct a person to make any claim for deduction of input tax in terms such that the deduction would fall to be claimed more than 4 years after the date by which the return for the first prescribed accounting period in which he was entitled to claim that input tax in accordance with paragraph (1) above is required to be made.

(1B) The Commissioners shall not allow or direct a person to make any claim for deduction of input tax where the return for the first prescribed accounting period in which the person was entitled to claim that input tax in accordance with paragraph (1) above was required to be made on or before 31st March 2006.

4. We found on the evidence below that the Appellant had not discharged its obligation to produce sufficient evidence of his entitlement to input tax deductions and we dismiss the appeal and allow the assessment of £20,679.00.

The Evidence

5. The Appellant had registered for VAT with effect from 28 February 2011 in respect of "Utilities Services" as shown in form VAT 1 filed by the Appellant. We had the benefit of correspondence between the parties and the Appellant's Statement of Case.

6. We heard evidence from Mr Scanlon, an officer of HMRC who was working in the evasion unit from 2010 until his retirement at the end of May 2014. Mr Scanlon had undertaken a visit which was at the offices of the Appellant's agent Mr Sisimayi, in October 2013. We also had the benefit of his notes of the meeting and Mr Scanlon's witness statement.

The Facts

We found the following facts:

7. At the interview in October 2013 between Mr Scanlon and Mr Williams and his agent, the following information was provided:

(1) Mr Williams said the main business of the Appellant was a PR business pursuant to which the Appellant would introduce UK companies to companies in Nigeria. He expected to receive a commission from these engagements calculated as a percentage of the value of goods/services sold. To date no commissions had been received. The commissions would be payable in cash.

(2) Mr Williams said the Appellant was working on engagements for a number of companies with household names but was unable to produce any evidence of an engagement with those companies, nor any billing address or payment details in respect of those companies and engagements. He produced some materials about the companies but Mr Scanlon noted these materials were of a general nature and could readily be found on the internet.

(3) Mr Williams said that the Appellant also carried on a mini cab business.

(4) Mr Williams produced some invoices which related to vehicle repairs, supplies of fuel- diesel and unleaded petrol, clothing, mobile phone services and building materials. These purchase invoices were claimed to relate to the mini cab business. There were no purchase invoices referable to the PR business. Neither the Appellant not his agent had been able to produce full records or purchase summaries, sales summaries, sales invoices, financial statements or bank statements at the meeting or subsequently.

(5) Mr Williams said the lack of records was due to the loss of two laptop computers. The agent had also moved office and his family had assisted as a result of which the records were all mixed up.

(6) Mr Scanlon pointed out that since the Appellant had commenced trading its VAT records show that the Appellant had incurred losses of £150,000 and asked how the losses were being sustained given the turnover of the mini cab business was very low and there had been no income from the PR business. In the period under consideration the turnover was declared to be £19,516.00. Neither Mr Williams nor Mr Sisimayi had an explanation. Mr Williams became cross and left the meeting leaving Mr Scanlon with the agent.

(7) After Mr Williams' departure Mr Scanlon went through the records belonging to the agent "one by one" seeking records pertaining to the Appellant but none were found.

8. Mr Scanlon considered that the loss of the laptop would not prevent the Appellant producing original documents or bank statements. Further he noted that there were no records of purchases and the available evidence could not be reconciled with the sums claimed as input tax credits.

9. Mr Scanlon, in making assessments to recover the input tax repaid, was prepared to accept the sums declared as outputs from the mini cab business and to allow only input tax for the items referable to the mini cab business namely the fuel, vehicle repairs and mobile phone invoices. He was not prepared to allow the VAT on the building materials nor the clothing as they were personal in nature and did not relate to the mini cab business. He informed the Appellant of his intention but before issuing an assessment he gave the Appellant further time until January 2014 to produce more evidence of input tax. No new evidence was produced.

10. The Appellant's agent asserted that copies of more invoices were despatched to HMRC on 25 February 2015. A copy of a post office recorded delivery notice bearing that date is attached to a letter from the agent. (We note that other references to this package of documents being sent to HMRC indicate it was sent in 2012. Whichever

date it was sent it would have included copies of the documents and another copy must surely have been capable of being produced for this appeal hearing.)

11. Mr Scanlon said he was unsure whether the laptops were lost or stolen as there are conflicting statements in the correspondence and Appellant's statement of case.

12. We understand from Mr Scanlon the parties had agreed to ADR and a meeting had taken place earlier this year but no settlement had been reached. Mr Scanlon informed the Tribunal that his colleagues handling the ADR had indicated the ADR process was unsuccessful because the Appellant had failed to produce any new evidence.

The table below shows the original and revised figures following Mr Scanlon's intervention:

Period.	Output Tax Declared	Input Tax Declared	Tax Due Declared	Output Tax Due	Input Tax Due	Tax Due	Assessment or Adjustment
P08/11	725.75	1036.91	-311.16	725.75	0	725.75	1036.91
P11/11	734.92	1198.18	-463.26	734.92	933.18	-198.26	265
P02/12	47.13	1531.89	-1484.76	754.13	393.89	360.24	1845
P05/12	259.27	1385.69	-1126.42	1419.27	23.69	1395.58	2522
P08/12	821.06	3403.14	-2582.08	980.06	81.14	898.92	3480.97
P11/12	812.44	5399.36	-4586.92	977.44	0	977.44	5564,36
P02/13	502.52	5999.20	-5496.68	572.52	1104.20	468.32	5965
P05/13	1062.16	9944.76	-8882.60	1258.16	143.56	1114.60	9997.20
P08/13	0	4600.11	-4600.11	0	449.72	-449.72	5049.83

Discussion

13. It is clear from Section 73(1) VAT Act 1994 that the legislation imposes a requirement to keep records and facilities on a person who is registered for VAT to enable his returns to be verified. The section also enables HMRC to exercise their best judgement in quantifying VAT due from a taxpayer where it appears that the taxpayer has made an incomplete or incorrect return.

14. Relevantly section 73(1) reads as follows:

> "*Where a person has failed …….to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are ….. incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify him.*"

15. It is also clear the section 73(2) enables HMRC to obtain a repayment of any refund of VAT paid to a person registered for VAT. Section 73(2) relevantly provides as follows:

"*In any case where, for any prescribed accounting period, there has been paid or credited to any person-*

(a) as being a repayment or refund of VAT; or

(b) ….

an amount ……which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly."

16. The Appellant registered for VAT with effect from 28 February 2011 in respect of a business described as "Utilities Services". The Appellant filed returns and sought repayments of VAT for each of the first six quarters for which the business was registered for VAT. HMRC had allowed the repayment for VAT the Appellant claimed as input tax. Understandably HMRC initiated an enquiry as the VAT reclaims indicated that the business had sustained losses of over £125,000 in its first 18months of trading and needed to understand the nature of the business being undertaken, verify the claims for repayment of VAT and understand how the losses were being sustained.

17. The Appellant claimed to be carrying on two businesses, a PR business which involves introducing UK companies to Nigerian companies and a taxi service business. In relation to the PR business the Appellant claimed to be working for a number of companies with household names but had no retainers, no contracts, no billing address for the companies, no correspondence indicating that the Appellant was engaging with the companies and hoping to secure contracts for the provision of services. The Appellant had information about those companies but Mr Scanlon formed the view that this was of a general nature of the sort that is readily available on the internet.

18. We consider it improbable that such household names would engage such a small organisation without an existing reputation or existing PR business to provide services of this nature. Further the lack of any evidence of any engagement with any company for whom PR services were allegedly being performed calls into question the Appellant's claim to be carrying on a business involving provision of PR services.

19. We also note that the Appellant had not issued any invoices for any services in respect of the PR business since its inception, was unable to explain how the Appellant was able to sustain losses of £125,000 given the low level of turnover of the taxi service business and became angry and left the meeting with Mr Scanlon when the issue was raised. In our opinion the Appellant failed to produce satisfactory evidence of his carrying on a PR business.

20. In relation to the taxi service business, the appellant had some outputs in respect of that business. We accept, as HMRC did, that the Appellant carried on a taxi service business.

21. In relation to the Appellant's explanation for the lack of evidence of invoices that two laptops were lost or stolen, we would expect the Appellant to be able to identify his major categories of expenditure, his major suppliers and seek duplicate invoices. Although this may not be possible for every item of expenditure, as this was a new business and the engagements would be relatively fresh in the Appellant's mind so we would expect it to be possible for copies of some invoices to be obtained.

22. The Appellant's agent considered his office move had contributed to the Appellant's situation. The agent's family assisted in the move and mixed up all of his papers. Mr Scanlon took time to sort through the papers of the Appellant's agent, who seemed unable to do this for the Appellant, but was unable to find a single record pertaining to the Appellant's business. The agent's office move seems not to have had any impact on the Appellant's inability to verify its claims for repayment of Input tax situation.

23. We consider the Appellant had failed in its obligation to maintain sufficient records to support the claims for repayment of input tax in respect of the PR business and we consider that HMRC are entitled under Section 73(1) assess to the best of their judgment the VAT due to be repaid by the Appellant. There were no records at all to support the claim for input tax deduction in respect of the PR business. In relation to that business the Officer's judgment was that a deduction should be denied in respect of all of the alleged input tax that was not attributable to the taxi service business, and should be repaid by the Appellant. We consider the Officer's judgment to be correct.

24. In relation to the taxi service business, the only evidence the Appellant provided of the alleged input tax on expenditure was invoices for fuel, vehicle repairs, clothing and building materials. HMRC accept that the Appellant was carrying on a taxi service and allowed as input tax the input tax referable to fuel and vehicle repairs. The Officer considered building materials could have been used by the Appellant to make supplies of taxi services and denied an input tax deduction for that expenditure. The VAT on building materials could only be input tax if it formed part of the overheads of the taxi service business. There was no evidence of what the building materials had been used for. In relation to the expenditure on clothing, HMRC considered that was personal expenditure and was not used to provide taxi services as there was no evidence that the clothing bore a business logo, inconsequence the Officer disallowed that expenditure. We consider the decisions of the Officer to be correct and that Officer's judgement met the standard imposed under section 73(2).

Decision

25. In light of the above, the Appellant has failed to maintain adequate records as required under section 72(3) VATA to verify his claim for input tax declared in the third column of the table above in respect of the periods 08/11 to 02/13. In consequence the Commissioners were empowered under section 73(2) VAT Act 1992 to raise an assessment to recover sums repaid to the Appellant for the periods 08/11 to 02/13 in the sum of £20,679.00 as shown in the column headed "Assessment or Adjustment" for each of the periods 08/11 to 02/13. We consider the decision to deny input tax in respect of the alleged PR business to be correct and the decision to deny

input tax in respect of the taxi service business to be correct to the extent of the expenditure on building materials and clothing. We dismiss the appeal.

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.

HEATHER GETHING
TRIBUNAL JUDGE

RELEASE DATE: 26 JUNE 2017