



TC06044

Appeal number: TC/2016/06456

Value added tax - input tax - fraudulent evasion of VAT - whether taxpayer either knew or should have known of that fact - yes - Finance Act 2007 Schedule 24 s 19 - whether liability for assessed VAT and penalty transferred to director - yes - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NAVEE LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL

**Sitting in public at Nottingham Justice Centre, Carrington Street, Nottingham
on 7 June 2017**

The Appellant did not attend and was not represented

Ms Esther Hickey, Officer of HMRC, for the Respondents

DECISION

The Appeal

1. This an appeal by Navee limited (“Navee”) against a decision of the
5 Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) contained in a
letter to the Appellant dated 26 January 2016, upheld on review on 21 October 2016,
denying Navee’s right to deduct input tax in the sum of £99,783 claimed in Value
Added Tax (“VAT”) during the accounting period 12/14 to 06/15.
2. The Commissioners grounds for the decision were that the input tax was
10 incurred by Navee in a transaction or transactions connected with the fraudulent
evasion of VAT and that Navee either knew or should have known of that fact.
3. HMRC make a cross application for the Appellant’s appeal to be struck out
under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber)
Rules 2009 on the basis that the tribunal does not have jurisdiction to hear the appeal
15 and is therefore obliged to strike out the appeal.
4. The notice of appeal states that Navee Ltd is the Appellant. However HMRC
have ascertained that the company was dissolved on 1st March 2016. Consequently
Navee Limited is no longer a legal entity and therefore HMRC assert that it cannot
bring an appeal against HMRC’s decision.
- 20 5. The Appellant was not represented and its proprietor Mr Mohammed Naveed
Akhtar did not attend the hearing. Both had been notified of the date time and venue
of the hearing. The Tribunal was therefore satisfied that it was in the interests of
justice to proceed.

Background

- 25 6. Navee was incorporated on 9 January 2014. Its sole director was Mr Akhtar. Its
accounting reference date was 31 January. No accounts had been filed.
7. Navee submitted a VAT repayment claim (03/15 period) which was suspended
pending verification checks by HMRC. On 2 June 2015, HMRC Officers visited the
company to review its business activities, books and records.
- 30 8. During October 2015, HMRC Officers visited the company again to discuss its
trading activities.
9. On 22 December 2015, HMRC compulsorily deregistered Navee from VAT as
no evidence of current trading or a future intention to trade had been provided.
Following further investigations HMRC concluded that the proprietor of the company
35 knew or should have known that its transactions were connected with fraudulent
evasion of VAT.

10. On 26 January 2016, HMRC advised Navee that a decision had been made to refuse Navee's entitlement to deduct the input tax shown below. The decision related to input tax claimed on the purchase of oud oil.

- £6,018.38 for VAT period 12/14
- 5 • £74,268.20 for VAT period 03/15
- £19,497.00 for VAT period 06/15

11. The decision was made in accordance with The European Court of Justice, in its judgment in the joined cases of *Axel Kittel v Belgian State* and *Belgian State v Recolta Recycling SPRL* (C-439/04 and C440/04), which stated that where a taxable person
10 knew or should have known that they were participating in a transaction connected with fraudulent evasion of VAT, that taxable person's right to deduct input tax should be refused.

12. HMRC's Officer White set out HMRC's reasoning.

- 15 i. Having made an extended verification of the Appellant's recorded transactions, all of them had been traced back to fraudulent tax losses in the appropriate periods, other than three transactions. Three transactions had not been traced back to an identified tax loss because of a missing trader. That said, based on similar facts it could be shown that, were the transactions to be traced back, they would begin with fraudulent tax loss.
- 20 ii. There was evidence from interviews carried out by HMRC with Mr Akhtar to suggest that he might have been aware of HMRC's extended verification process prior to their visit in August 2015, at which MTIC fraud was discussed. Navee could therefore be shown to have had a general awareness
25 of VAT fraud including the need to take reasonable steps to establish the credibility and legitimacy of its customers, suppliers and supplies.
- 30 iii. All the transactions were undertaken on a back-to-back basis, being made on the same day or within a very short period of time, for the same amount of goods and the same product. Navee was able within an extremely short period of time to match its customer needs to its suppliers stock on hand and was never left with surplus stock. It is to be expected that a business which carried
35 on a commercial venture would, if it was buying goods to sell on, hold unsold stock. Alternatively, if it was contacted first by a customer and then went out to source the goods, that there would be a delay between obtaining the order and finding someone able to supply the precise quantities and specifications of goods required by the customer. The fact that in this case customer requirements could be instantly matched on the day they were required suggested that the transactions were artificially contrived.
- iv. Payment for all the transactions was made and received in Bitcoin. There is no audit trail to prove payment had ever been received.

- v. The business had no premises. Instead it traded from an accommodation address.
- vi. There is no documentary evidence that trade had ever taken place, nor were there any delivery notes.
- 5 vii. Trade was extremely sporadic. A lot of trade took place on one day and then there was no trade for long periods afterwards.
- viii. Despite the value of the goods being purchased and sold Navee Ltd did not enter into any formal written contracts with its suppliers or customers during the periods under review. This means that there was no formal return and exchange policy for any party should the goods later be found to be faulty, and matters such as transfer of title, payment and delivery terms were also not subject to any formal agreement. It would be expected that a business carrying out a normal commercial trade would ensure that redress in such cases would be set out in a formal written agreement, if for no other reason than in case of legal dispute. This suggests that Navee Ltd knew it would not need formal contracts because the transactions had been pre-arranged.
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- ix. Despite the value of the goods being purchased and sold Navee did not insure the goods. This meant that the goods purchased and sold in the periods under review were not covered by any form of insurance. So if the goods were to be lost, stolen or damaged in transit there would be no way that the Company would be able to recoup any loss. One reason for not taking out adequate insurance would be that it knew that the transactions were contrived and thus no matter what happened to the goods, Navee would obtain payment.
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- x. Navee Ltd did not pay its suppliers until it had received payment from its customers. Given its inadequate due diligence and the lack of formal written contracts, Navee appears to have trusted the counterparties to the transactions to honour their obligations. If the counterparties had not honoured their obligations then Navee was exposed to the risk that it would be left with goods for which its purchasers could not pay, or that it would be unable to fulfil orders from its customers. The conclusion to be drawn from Navee's approach is that it knew perfectly well that its suppliers and customers would not let it down because the transactions had been pre-arranged.
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- xi. Mark-ups were fairly uniform regardless of whom the suppliers or customers were. No account appears to have been taken of market fluctuations; no discounts appear to have been given and no negotiation appears to have been undertaken. This suggests that Navee was not concerned with receiving or applying a true open market and competitive value to the goods because the goods were of no significance.
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- xii. Despite declaring on the VAT registration form that its main business activity was to be 'flat pack furniture/household furniture (retail)' Navee failed to undertake any transactions for this activity, concentrating instead on the
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- The VAT must relate to an actual supply.
- The amount to be claimed is VAT properly chargeable and not the VAT actually charged, where this is different.
- 5 • The goods or services on which the VAT was charged must have been supplied to the person seeking to claim the input tax.
- The supplies must have been incurred for the purpose of the business.
- The supplies must not be subject to an input tax restriction.
- The supplies must normally be received in the accounting period in which they are claimed.
- 10 • The person seeking to recover the input tax must hold a valid tax invoice or other satisfactory documentation.

22. Officer Watts explained that the ECJ in the case of *Kittel v Belgian State* (C-439/04) confirmed that where it is ascertained, having regard to objective factors, that
15 the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with the fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct.

23. Officer Watts concluded that she agreed with the findings of Officer White and therefore upheld Officer White’s decision to deny the total input tax claims at
20 £99,783.

24. An appeal against the decision was lodged by Mr Akhtar with the Tribunal on 21 November 2016.

Appellant’s Case

25 25. In the notice of appeal, Mr Akhtar said:

 “I am appealing the decision as I am innocent of any fraudulent activities that have taken place whilst I was trading. I also refute knowledge of any fraudulent activities that may or may not have taken place. My final issue is being personally responsible for the tax allegedly owed by the company.”

30 **HMRC’s Case**

26. HMRC’s case insofar as Mr Akhtar refutes any knowledge of fraudulent trading is set out at paragraphs 11 to 22 above.

27. HMRC’s strikeout application is on the basis that Navee Limited was dissolved on 1 March 2016 and consequently the Company is no longer a legal entity and
35 cannot bring an appeal against the decision denying it right to deduct input tax.

Conclusion

28. As HMRC state, Navee Ltd having been dissolved on 1 March 2016 is no longer a legal entity, has no legal status and cannot appeal either HMRC’s decision to deny the input tax or impose the penalty.

29. Having considered HMRC's reasoning in arriving at its decision to deny Navee the right to deduct input tax for the periods in question, I entirely concur with that decision. I set out the reasoning in full and the merits of the appeal to provide for the possibility that Mr Akhtar may consider an application to restore the Company to the register.

30. The appeal is accordingly dismissed. The decision to deny the input tax and raise an assessment in the sum of £60,415.01 is confirmed. The decision to impose a penalty of £38,837.71 is also upheld.

31. 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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**MICHAEL CONNELL
TRUIBUNAL JUDGE**

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RELEASE DATE: 03 AUGUST 2017