TC07011

Appeal number: TC/2016/2151

VAT - input tax - evidence of delivery goods received

FIRST-TIER TRIBUNAL

TAX CHAMBER

BETWEEN

NEW COLLECTION LEICESTER LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE PETER KEMPSTER
Mrs SHAMEEM AKHTAR

Sitting in public at Centre City Tower, Birmingham on 16 November 2018

Mr Alan Rashleigh (Alan Rashleigh & Associates Ltd) for the Appellant

Mr David Wilson (HMRC Solicitor's Office and Legal Services) for the Respondents

DECISION

Introduction

1. The Appellant appeals against a disputed VAT assessment issued on 8 March 2016 by the Respondents ("**HMRC**"); after adjustments agreed between the parties, the amount still in dispute is £67,339.00. The amount assessed relates to input tax recovery disallowed by HMRC.

2. The Appellant trades as a manufacturer of adult and children's clothing, and has been registered for the purposes of VAT since 2010. Following routine compliance visits in 2014, HMRC identified a number of areas of concern. Most of the points of dispute have been resolved by discussion and by an ADR process. The unresolved dispute concerns HMRC's disallowance of input tax claimed in VAT periods 03/11 to 03/14 relating to six suppliers. In advance of the hearing the Appellant conceded that purchases from one supplier, Lucky 11 Limited, were made after the seller had been de-registered for VAT, and no longer disputed the denial of input tax on those purchases. The remaining suppliers and input tax were:

Ahmed Garments	£29,205.01
USH (UK) Ltd	£13,888.62
Kolor Kamar Ltd	£178.44
Cheap Clothing	13,963.19
Zed Fashion	8,999.40

Witness Evidence

3. We took oral evidence from one witness for each party:

   (1) For HMRC, Mrs Roselie Richardson was the compliance caseworker who conducted the visits and dealt with the input tax disallowances. She confirmed and adopted a formal witness statement dated 6 November 2017.

   (2) For the Appellant, Mr Mobin Bhad is the senior manager of the Appellant. He confirmed and adopted a formal witness statement dated 1 December 2017.

4. Mrs Richardson's evidence included the following:

   (1) At the time of the visits she had dealt with the Appellant's director Mr Patel and the company's agents Watergates accountants. From March 2015 she dealt with Mr Rashleigh. She had concerns on the deductibility of input tax for several suppliers.

   (2) *Ahmed Garments* – Purchase invoices in the period January 2012 to December 2012 had been provided. The supplier had been de-registered for VAT in November 2011. The company was still registered at Companies House when she last looked. She visited the supplier's premises but they were unoccupied; a colleague had informed her that the business was not trading at the address in 2012. She was provided with the payments ledger but was unable to verify all the payments.

(3) *USH (UK) Ltd* - Purchase invoices in the period November 2010 to September 2011 had been provided. HMRC had recorded the supplier as "missing" at the time of the supplies, and the business premises were unoccupied at that time. The company had not been deregistered for VAT until after the disputed invoices; there were missing VAT returns. The company had entered insolvency and was liquidated on 12 October 2011; she contacted the insolvency practitioner and was provided access to records; she could trace one purchase to the records (and allowed that input tax) but not he others.

(4) *Kolor Karmar Ltd* – Purchase invoices were provided. The company was deregistered for VAT in 2013. Where she could match the invoices to payments shown in the bank statements, she allowed the input tax. The supplier ceased trading soon after the period under scrutiny. She had requested further documentation but nothing was received.

(5) *Cheap Clothing* - Purchase invoices in the period February 2013 to April 2013 had been provided. She had visited the supplier's premises but there was no business trading; the tax agent had ceased to act; she could not trace the director of the supplier. HMRC had recorded the supplier as "missing" as of July 2012. She could not match the invoices to payments on the Appellant's bank statements.

(6) *Zed Fashion* - Purchase invoices in the period November 2013 to March 2014 had been provided. HMRC had recorded the supplier as "missing" at June 2012. She had visited the supplier's premises but they were no longer occupied; as well as the stated address of Unit 7 72 Dorothy Road she had checked all of Units 6-11; she also checked the other address of 6 Temple Buildings and asked the landlord about occupation, and was told there has been a number of occupiers. The local council had confirmed the registered occupier at the time of the supplies was a different person.

(7) There was a number of other suppliers she had checked; where she could vouch the invoices to the bank statements, she allowed the input tax; this had involved considerable work. Where there was no exact match, she tried to tie items to payments close in time; the accountants had said they would perform this exercise, but had failed. In terms of alternative evidence, the Appellant had provided bank statements and purchase ledgers; there were no delivery notes available; she had allowed all input tax where she was satisfied there was an adequate audit trail.

(8) In relation to the items she could not reconcile, she had contacted the accountants in November 2014 with a list of alternative evidence that would be considered by HMRC; only the bank statements and purchase ledgers had been provided.

5. Mr Bhad's evidence included the following:

(1) He is the senior manager of the Appellant, and is the son of the company director. The company manufactures adult and children's clothing; some manufacturing is outsourced to CMT (cut, make & trim) businesses locally, especially to meet tight delivery deadlines.

(2) The Appellant had no reason not to accept the disputed invoices as genuine. The suppliers had been registered at Companies House and were registered for

VAT; as far as the Appellant was concerned, all the suppliers had been trading. The Appellant would not have been paying unless the supplier had provided the goods ordered. The Appellant and its accountants had provided to HMRC all bank statements and the purchase ledgers.

(3) The Appellant provided to its accountants the invoices, bank statements and cheque stubs; the accountants then prepared the purchase ledgers; the ledgers showed cleared balances to the suppliers at the end of the periods.

(4) Many customers paid in cash, and this was used to pay some suppliers. There were also payments by BACS transfers. Sometimes payment was satisfied by supply of manufacturing services, and this was contra-ed against amounts owed – for example, Ahmed Garments was a customer as well as a supplier and might pay the Appellant in goods, so that there were invoices going both ways. "Received" would be written on invoices.

(5) There were no delivery notes because all suppliers were local and the Appellant used its own vans and drivers. Most suppliers were with a ten minute walk of the Appellant. Much business with local suppliers and customers was done by word of mouth, usually by telephone.

(6) He thought HMRC may have visited incorrect addresses.

(7) He joined the business around 2010; his father had known the suppliers before that time. His father had operated mainly a manual accounting system; on joining Mr Bhad had set up online banking and more formal systems; most cash business came to an end in 2012-2013.

Respondents' case

6. Mr Wilson submitted as follows for the Respondents.

7. HMRC made no case that the disputed input tax was irrecoverable under the *Kittel* principle (ie that the trader knew or should have known of a connection to VAT fraud). Instead, HMRC considered that for the disputed items the Appellant had not met one of the preconditions for the right to deduct: holding an invoice (this was accepted) and delivery of goods (this had not been adequately evidenced) – *Terra Baubedarf-Handel GmbH v Finanzamt Osterholz-Scharmbeck* [2005] STC 525.

8. HMRC's policy had been correctly stated in writing to the Appellant by letter dated 11 November 2014, which also invited provision of evidence of delivery of the goods. HMRC accepted that payment of invoices would generally evidence that the relevant goods had been received. Mrs Richardson had undertaken an extensive exercise to match payments on the bank statements to the invoices; this had included making allowance for several invoices being combined into a single payment, or payment of an invoice by more than one instalment. All matched payments had been accepted as evidencing valid input tax. The items before the Tribunal were those where, despite all Mrs Richardson's work, the invoice could not be audited as having been paid.

9. For the reasons given in Mrs Richardson's evidence, HMRC had cause for concern over each of the suppliers where input tax had been disallowed – traders had been identified as missing, or could not be traced at the reported business premises, or had been deregistered for

VAT, or had entered insolvency. The Appellant had been given every opportunity to present evidence of delivery. Explanations of large cash payments and barter transactions had been offered; it was reasonable to expect the Appellant to back these up with evidence.

Appellant's case

10. Mr Rashleigh submitted as follows for the Appellant.

11. HMRC had not properly investigated the explanations provided concerning the suppliers. Some challenged transactions predated the deregistration of the relevant supplier; no enquiries had been made of suppliers who were clearly over the VAT registration threshold; Companies House records had not been checked thoroughly; it appeared that Mrs Richardson may have visited incorrect addresses. It was unreasonable to expect the Appellant to know whether suppliers had been deregistered for VAT, or to be aware of the detail of HMRC's formal guidance.

12. There were no delivery notes, so they could not be supplied to HMRC. When Mr Rashleigh had visited the Appellant's premise in 2015, some of the goods in question had still been in stock on the shelves.

13. HMRC had challenged the input tax but had not adjusted the output tax for goods HMRC contended had not existed.

Consideration and Conclusions

14. We found both witnesses reliable. Mr Bhad acknowledged that, at the time of the relevant transactions, the business had a volume of cash transactions (often sizeable amounts) and had barter deals with businesses who were both customers and suppliers of the Appellant; he had been phasing that out and moving the business to electronic banking; due to the closeness of the suppliers and customers, there was often informality such as not producing delivery notes and similar paperwork. We accept that this was a common method of conducting business in the garment trade at the relevant time, and does not imply any irregularity of trading; however, the onus is on the Appellant to evidence that the goods were received by it.

15. Mrs Richardson performed an admirable amount of work trying to verify that goods had been received. We do not accept the criticisms made of the exercise she conducted. She had good reason to investigate purchases made from traders who had been identified as "missing" or deregistered; that does not cast any shadow on the Appellant but it justifies HMRC requiring the Appellant to prove that the relevant goods were received. She accepted that where the Appellant paid for an order, then HMRC should be satisfied that the goods in question had been received by the Appellant. She obtained the bank statements and the purchase ledgers and set about trying to match payments to invoices. It is important to comment that that was a task which the Appellant or its accountants should have been doing, rather than just handing the books to HMRC and expecting HMRC to do the work. For all items which she could match, she allowed the input tax; there were items that she could not match; she highlighted those anomalies to the Appellant and its accountants, and invited alternative evidence; we accept that if such evidence had been provided then she would have considered it and, where appropriate, adjusted her figures. However, for the reasons given by Mr Bhad (principally cash sales and barter transactions) there were gaps in the audit trail. It was up to the Appellant to fill those gaps. Even by the date of the hearing, there was no documentary evidence available to cover the disputed items. The onus of proof lies on the Appellant and it has not been met.

16. As stated by the European Court in *Terra Baubedarf-Handel* (at 538): "the right to deduct must be exercised in respect of the tax period in which the two conditions required … are satisfied, namely that the goods have been delivered or the services performed and that the taxable person holds the invoice or the document which, under the criteria determined by the member state in question, may be considered to serve as an invoice." For the reasons stated above, the Appellant has not, in relation to the disputed items, proved on the balance of probabilities that the goods have been delivered. Therefore, the appeal must be dismissed.

Decision

17. The appeal is DISMISSED.

Right to apply for permission to appeal

18. 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.

PETER KEMPSTER
TRIBUNAL JUDGE

RELEASE DATE: 28 FEBRUARY 2019