



TC07967

Appeal number: TC/2019/04377

Procedure - VAT registration - appeal against a favourable HMRC decision misconceived - cross application by HMRC to strike out the appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROBERT PATTEN

Appellant

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL

Online Video Hearing on 7 October 2020

Mr Peter Hennessey for the Appellant

Ms Olivia Donovan Litigation Officer of HMRC for the Respondents

DECISION

The Appeal

1. This is an appeal by Robert Patten (“the appellant”) against the decision of the Respondents (“HMRC”) on 24 May 2019, to refuse the appellant’s request for an exemption from registration under Schedule 1, paragraph 1(3) VATA 1994.
2. HMRC apply to the Tribunal for the appeal to be struck out on the basis that the Tribunal has no jurisdiction to hear the appeal, which HMRC assert is misconceived.

Background

3. The appellant works on a self-employed basis as a gas engineer. He normally expects to trade below the VAT registration threshold. However, in June 2015 he had, on a rolling 12 month basis, exceeded the VAT registration threshold and, in accordance with paragraph 1(1)(a) of Schedule I, had become liable to be registered for VAT unless he could satisfy HMRC that his taxable supplies for the next 12 months would be below the de-registration threshold in which case he would not have to register for VAT as a result of paragraph 1(3) of Schedule 1.
4. The appellant did not apply to HMRC for exemption from registration under paragraph 1(3) of Schedule 1 until January 2018.
5. On 23 April 2018, HMRC refused the exemption as they were not satisfied that the appellant’s taxable supplies between July 2015 - June 2016 would be below the de-registration limit.
6. On 24 May 2018, the appellant appealed HMRC’s decision. HMRC did not object to the late appeal.
7. On 25 April 2019 the appellant’s appeal to the Tribunal against HMRC’s decision was allowed as the Tribunal found HMRC had taken into account irrelevant matters. The Tribunal set aside the HMRC’s original decision dated 23 April 2018. In its decision (‘the first decision’) HMRC were required to make a new decision in relation to the appellant’s request to be exempt from registering for VAT in accordance with paragraph 1(3) of schedule 1 to the Value Added Tax Act 1994 (“VATA 1994”),
8. On 24 May 2019, HMRC made a new decision (‘the second decision’) and again refused the appellant’s request for an exemption from registration under Schedule 1, paragraph 1(3) VATA 1994.
9. When establishing whether HMRC can accept a request for exception, HMRC should only consider and take into account information and evidence that was known at the time of the breach. This was affirmed by the Tribunal on 25 April 2019.
10. On 24 June 2019, the appellant appealed the second decision.

11. On 22 January 2020, the parties held an ADR meeting. HMRC reconsidered the decision dated 24 May 2019 and accepted that the wording of the refusal letter dated 24 May 2019 would have given the inference that HMRC had considered information after the breach.

12. HMRC acknowledged the error and agreed to grant the appellant exception from VAT Registration with effect from 1 August 2015.

13. The appellant's representative, Mr Hennessey, was not willing to accept this favourable outcome unless HMRC accepted that the appellant was 'truly eligible for the exception'. Mr Hennessey contends that HMRC, whilst accepting the appellant's application for exemption from registration, have not done so for the right reasons.

14. On 4 February 2020 following a further ADR meeting, HMRC issued a new decision ('the third decision') which replaced the second decision. In that decision HMRC accepted the appellant's request to be exempt from registration under Schedule 1, paragraph 1(3) VATA 1994.

HMRC's application

15. On 6 March 2020, HMRC applied for a direction from the Tribunal, under Rule 6(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, that the whole of the appeal be struck out in accordance with Rule 8 (2)(a).

16. The reason for the application is that the decision dated 24 May 2019, appealed on 24 June 2019, no longer stands and therefore the Tribunal has no jurisdiction to consider it. The new decision dated 4 February 2020 has not been appealed but in any event carries no right of appeal as HMRC have accepted the appellant's request for exemption.

17. Section 83(1)(a) VATA 1994 states that, an appeal shall lie to the Tribunal with respect to the registration or cancellation of registration of any person. HMRC submit that there is no appeal right against a decision to approve a request for exception from VAT registration. The Tribunal only has jurisdiction to review a decision to refuse a request for exception.

18. In this case, following the new decision dated 4 February 2020, HMRC have not VAT registered the appellant. The approval letter was sent to the appellant and the request is now closed on HMRC internal systems.

Conclusion

19. The decision under appeal is the issue of a decision dated 24 May 2019 in which HMRC decided that the appellant should be registered from 1 August 2015.

20. During the ADR meeting which took place on 22 January 2020, HMRC decided to reverse its decision and grant the appellant exception from VAT registration from 1 August 2015.

21. The matter under appeal (as stated in the appellant's Notice of Appeal) was resolved during ADR. HMRC's decision of 4 February 2020 replaces the decision of 24 May 2019. HMRC accept the appellant's application for exemption from registration.

22. This Tribunal has no jurisdiction to consider the appellant's contention that HMRC have not granted the exemption for the right reasons

23. The Tribunal directs under Rule 6(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, that the whole of the appeal be struck out in accordance with Rule 8 (2)(a).

24. 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.

MICHAEL CONNELL

**TRIBUNAL JUDGE
RELEASE DATE: 07 DECEMBER 2020**