[2021] UKFTT 0063 (TC)

TC08048

Appeal number: TC/2018/07242

VAT - claim for repayment supplement, interest at both a simple and commercial rate, credit card charges and costs - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

RED KITE ART AND JEWELS LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE NIGEL POPPLEWELL
NORAH CLARKE

Sitting in public at Cardiff on 21 October 2019 with further submissions from the parties received in November 2019, January 2020 and February 2021 and following a case management hearing held by video on 3 February 2021

Mr Arthur Edwin Turner, Director of the Appellant, for the Appellant

Mr Daniel Hopkins, Officer of HM Revenue and Customs, for the Respondents

DECISION

Background

1. This is a VAT case. It relates to repayments of VAT for the VAT periods 01/15 to 07/17 inclusive.

2. The appeal was made by the appellant on 4 November 2018 and was first heard by this panel at a face to face hearing in Cardiff on 21 October 2019. The appellant was clearly appealing against HMRC's decision in relation to repayment supplement, interest, costs, and credit card charges. The amount claimed in respect of these matters, in the appellant's notice of appeal, was £17,868.86. At the original hearing, however, it seemed that the appellant was also challenging the quantum of input tax repayment allowed to him by HMRC.

3. Following that hearing, we issued directions concerning submission of further information and documents which, through nobody's fault, had not been made available to us at the hearing, and a bundle including that information and documentation was provided by the appellant to the Tribunal in November 2019. At the same time the appellant made further submissions regarding its case.

4. The relevance of much of the information provided in the bundle was not readily apparent to the panel, and so a further hearing was convened, originally on a face-to-face basis but subsequently to be held by way of a video hearing, and that further hearing was scheduled to take place on 10 February 2021.

5. On 21 January 2021 HMRC made an application for set-aside, postponement and further and better particulars (the "**application**"). In response, the appellant submitted a brief email on 22 January 2021 reasserting its claim for interest bank charges and repayment supplement but intimating that it would not pursue its claim for costs, and that the appeal should proceed "as submitted". We took that to mean that the appellant wished the substantive appeal to proceed on 10 February 2021.

6. In light of the urgency of the application, the video test hearing scheduled for 3 February 2021 was converted into a case management hearing to consider the application. Notice of this was given, in good time, to both parties, but very shortly before the hearing on 3 February 2021 was scheduled to start, the appellant sent a note to the Tribunal that Mr Turner who represents the appellant would not be attending the hearing for personal reasons, nor would he be attending the hearing scheduled for 10 February 2021. But the appellant wished the appeal to continue in Mr Turner's absence.

7. At the hearing on 3 February 2021, we decided that the hearing scheduled for 10 February 2021 should deal only with the application and should not be a further full hearing of the substantive matters in the appeal. And in particular, that hearing should deal with the respondent's submissions, set out at paragraph 12-15 of the application, that the appellant's appeal did not extend to an appeal against HMRC's conclusions as to the amount of input tax to which it was entitled to the periods under appeal, and

that its appeal was restricted to the appellant's claims for repayment supplement, interest, credit card interest and charges and costs for those periods.

8. Our Decision on the application was released to the parties on 18 February 2021. We granted HMRC's application that the appellant's notice of appeal did not include a claim for repayment of input tax. And that the ambit of its appeal is limited to interest, repayment supplement, credit card charges and directors costs. It was our decision, too, that the appellant cannot mount a "backdoor" challenge to the decisions made by HMRC concerning input tax repayments, and that for the purposes of this appeal, those amounts shall be treated as correct. And when the Tribunal considers the issues relating to interest, repayment supplement, credit card charges and costs, it will do so on the basis that the amounts of input tax repayment determined by HMRC are correct as a matter of fact.

The law

9. The legislation all of which is set out in VAT Act 1994 and which is relevant to this appeal is set out below:

> **"78. Interest in certain cases of official error.**
>
> (1) Where, due to an error on the part of the Commissioners, a person has-
>
> (a) accounted to them for an amount by way of output tax which was not output tax due from him and, as a result, they are liable under section 80(2A) to pay (or repay) an amount to him, or
>
> (b) failed to claim credit under section 25 for an amount for which he was entitled so to claim credit and which they are in consequence liable to pay to him, or
>
> (c) (otherwise than in a case falling within paragraph (a) or (b) above) paid to them by way of VAT an amount that was not VAT due and which they are in consequence liable to repay to him, or
>
> (d) suffered delay in receiving payment of an amount due to him from them in connection with VAT, then, if and to the extent that they would not be liable to do so apart from this section, they shall pay interest to him on that amount for the applicable period, but subject to the following provisions of this section.
>
> (1A) In subsection (1) above-
>
> (a) references to an amount which the Commissioners are liable in consequence of any matter to pay or repay to any person are references, where a claim for the payment or repayment has to be made, to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied; and

(b) the amounts referred to in paragraph (d) do not include any amount payable under this section.

(2) Nothing in subsection (1) above requires the Commissioners to pay interest-

(a) on any amount which falls to be increased by a supplement under section 79; or

(b) where an amount is increased under that section, on so much of the increased amount as represents the supplement.

(3) Interest under this section shall be payable at the rate applicable under section 197 of the Finance Act 1996.

……..

79. Repayment supplement in respect of certain delayed payments or refunds.

(1) In any case where-

(a) a person is entitled to a VAT credit, or

(b) …….

(c) ……..

(d) …….

(e) ……..

and the conditions mentioned in subsection (2) below are satisfied, the amount which, apart from this section, would be due by way of that payment or refund shall be increased by the addition of a supplement equal to 5 per cent. of that amount or £50, whichever is the greater.

(2) The said conditions are-

(a) that the requisite return or claim is received by the Commissioners not later than the last day on which it is required to be furnished or made, and

(b) that a written instruction directing the making of the payment or refund is not issued by the Commissioners within the relevant period, and

(c) that the amount shown on that return or claim as due by way of payment or refund does not exceed the payment or refund which was in fact due by more than 5 per cent. of that payment or refund or £250, whichever is the greater.

(2A) The relevant period in relation to a return or claim is the period of 30 days beginning with the later of-

(a) the day after the last day of the prescribed accounting period to which the return or claim relates, and

(b) the date of the receipt by the Commissioners of the return or claim.

……..

85A. Payment of tax on determination of appeal

(1) This section applies where the tribunal has determined an appeal under section 83.

(2) Where on the appeal the tribunal has determined that-

(a) the whole or part of any disputed amount paid or deposited is not due, or

(b) the whole or part of any VAT credit due to the appellant has not been paid,

so much of that amount, or of that credit, as the tribunal determines not to be due or not to have been paid shall be paid or repaid with interest at the rate applicable under section 197 of the Finance Act 1996.

(3) Where on the appeal the tribunal has determined that-

(a) the whole or part of any disputed amount not paid or deposited is due, or

(b) the whole or part of any VAT credit paid was not payable,

so much of that amount, or of that credit, as the tribunal determines to be due or not payable shall be paid or repaid to HMRC with interest at the rate applicable under section 197 of the Finance Act 1996.

(4) Interest under subsection (3) shall be paid without any deduction of income tax.

(5) Nothing in this section requires HMRC to pay interest-

(a) on any amount which falls to be increased by a supplement under section 79 (repayment supplement in respect of certain delayed payments or refunds); or

(b) where an amount is increased under that section, on so much of the increased amount as represents the supplement."

Evidence and findings of facts

10. At the hearing on 21 October 2019, we were provided with an HMRC bundle of documents. As mentioned above, this did not contain documents which the appellant had supplied, or which it believed it had supplied, to HMRC, and those documents were then supplied to the panel in November 2019. At the original hearing, the appellant gave a blend of oral evidence and submissions. On the basis of the foregoing, we find the following facts:

(1) Arthur Edwyn Turner VC, i.e. the nom de plume adopted by the appellant's representative, was registered for VAT with effect from 1 October 2013. His business was described as the purchase and resale of collectables and antiques.

(2) On 30 January 2015 HMRC wrote to Mr Turner confirming that it wished to check into his VAT returns for the period ending 31 January 2015.

(3) On 16 February 2015 Mr Turner requested a transfer of the VAT registration number to the appellant company and as a result of that request, his VAT number was reallocated to the appellant with effect from that date.

(4) Following a visit to the appellant's premises on 22 May 2015, HMRC sought further information from the appellant in an email of 17 June 2015, and on the same day the appellant provided the requested calculations and information.

(5) The appellant used the global accounting scheme to account for VAT. This is formally titled "The Margin and Global Accounting Scheme" and its operation is fully described in VAT Notice 718.

(6) That notice describes the Global Accounting Scheme as an optional simplified variation of the Margin Scheme from which it differs in that under the Margin Scheme VAT is accounted for on the margin achieved on the sale of individual items, whereas under the Global Accounting Scheme VAT is accounted for on the margins between total eligible purchases and total eligible sales in an accounting period. It is therefore ideal for businesses which buy and sell large numbers of small value goods. And so ideal for use by the appellant.

(7) Notice 718 contains detailed information about eligible purchases and eligible sales.

(8) Having considered the information supplied by the appellant on 17 June 2015, HMRC took the view that the appellant was not operating the Global Accounting Scheme properly and sent a letter dated 22 June 2015 to the appellant, by email, to that effect.

(9) There was then a further communication between HMRC and the appellant in 2015 culminating in a meeting held on 21 January 2016 between the appellant and HMRC. On 22 January 2016 HMRC sought further

information concerning the appellant's use of the Global Accounting Scheme, and in a letter dated 25 January 2016 to the appellant, HMRC set out the issues which had been discussed at the meeting and their view as to how and why the appellant was not operating the scheme correctly. They also sought further information from the appellant.

(10) On 10 February 2016 the appellant sent revised information to HMRC including information relating to the periods 10/15 and 01/16. And on 22 February the appellant wrote to HMRC in which it said that if HMRC had not paid the amount of repayment which it thought was due to it, within seven days, it would commence legal action for its recovery.

(11) In a letter to the appellant dated 4 March 2016 HMRC set out their misgivings about the way in which the appellant had operated the Global Accounting Scheme and asked him to resubmit spreadsheets previously submitted which showed the opening and closing values of the relevant stock. That letter reiterated HMRC's contention that the repayment could not be released until HMRC were entirely satisfied that the appellant's VAT returns were correct.

(12) It is not clear to us from the evidence when this was suggested, but by 27 June 2016 an HMRC facilitator had been appointed to facilitate an ADR meeting which took place on 7 July 2016.

(13) In a letter dated 11 October 2016 to the appellant, HMRC sought documents and information for the VAT periods ending 12/15, 03/16 and 06/16 since those returns, according to the letter, sought a repayment of £162,960.

(14) In an email dated 16 December 2016 the HMRC facilitator set out the adjustments which should be made to the VAT returns for the periods ending 04/14 to 01/16. This was based on the revised spreadsheets that the appellant had provided to her after the ADR meeting. This letter reduced the repayments claimed by the appellant for the VAT periods under consideration in this appeal to the amounts set out in the table set out at [21] below.

(15) In response to that email, in an email dated 20 December 2016, the appellant indicated that the HMRC facilitator's calculations were wholly unacceptable and attached, to its email, an updated VAT statement showing that the "sum now due is £21,430".

(16) The formal ADR process closed in January 2017 but there was ongoing correspondence between HMRC and the appellant which resulted in letters dated 12 April 2017 from HMRC to the appellant in which HMRC set out in detail what they required to verify the appellant's repayment claims for the periods ending 04/16, 07/16 and 01/17.

(17) On 13 June 2017 the appellant sent HMRC an updated schedule of the amount that he considered HMRC owed it, which amounted in total to £20,268.35.

(18) The appellant chased up a response to this email on 16 July 2017 and again on 27 September 2017.

(19) HMRC responded on 8 November 2017 seeking documents and information relating to the VAT period 10/17. The appellant provided this information on 16 November 2017 and again on 24 November 2017 to which HMRC responded on 27 November 2017 seeking further documents and information.

(20) In a letter dated 7 February 2018 HMRC set out a comprehensive review of the amounts claimed by the appellant for a number of VAT periods including those under consideration in this appeal. It explained why certain input tax claims had been disallowed and, effectively, rolled up the VAT credit for which the appellant was entitled for those periods into a single credit for the period 10/17. The credit given to the appellant was £3,050.60.

(21) The appellant made a formal complaint to HMRC on 1 June 2018 in which it said that HMRC had delayed input tax payments from October 2014 to 7 February 2018 resulting in loss of income credit card interest, directors costs and claimed £14,870.56.

(22) HMRC responded to that complaint in a letter dated 31 July 2018 and partially upheld it. In their letter HMRC stated that for the VAT periods 01/15 to 01/16, they were not in a position to release repayment claims before the process of ADR and thereafter had reduced the amounts of the appellant's claims. As a result of those reductions, no repayment supplement was due to the appellant for those periods. As regards the VAT periods 04/16 to 01/18, HMRC stated that it had not been possible to obtain all the information and documents relating to the appellant's repayment claims for these periods due to HMRC's poor record keeping. They upheld the appellant's complaint that they had delayed these repayments without good cause and the author of the letter indicated that he had asked the caseworkers manager to consider paying repayment supplement for the periods 04/15 to 07/17. However for the period 10/17, the repayment claim had been reduced by an amount which meant that repayment supplement was not due. HMRC also accepted that it should pay some redress for the delays in dealing with the appellant claims and agreed to pay the appellant a further £25 for each of the six payments which they had unnecessarily delayed, namely those for the periods 04/16 to 07/17.

(23) The appellant responded to this letter in a letter dated 5 October 2018. In that letter it indicated that the repayment supplements for 01/15 to 01/16 had not been calculated correctly and that £25 per quarter is insufficient. And the repayment supplements for 04/16 to 07/17 were not calculated correctly as £50 was insufficient.

(24) The appellant set out its own view of the amounts which should have been paid. These are based on the amount of input tax which the appellant claimed was due for the relevant periods and which was set out in the schedules that he

had sent to HMRC during the course of their negotiations and which figures are also set out in the schedule which accompanied the appellant's grounds of appeal.

(25) That letter also dealt with interest, and the appellant refers to section 78 VAT Act 1994 as being applicable to "any instance which input tax repayments are not paid within the statutory timescale of 30 days as is credit card interest and costs".

(26) HMRC responded to this on 23 October 2018, reiterating their view that because of the reductions in the repayments claimed by the appellant, no repayment supplement was due for the periods 01/15 to 10/15. Repayment supplement on the reduced repayment amount for period 01/16 was due in an amount of £95.25. Repayment supplement for the periods 04/16 to 07/17 was due in the amounts set out in the table at [21] below.

(27) In a letter dated 26 October 2018 HMRC told the appellant that it was concluding its complaint, and on 4 November 2018 the appellant gave notice of its appeal to the Tribunal. In that notice of appeal, the appellant indicated that it would be providing full grounds for its appeal together with supporting documentation within 14 days, and it did so in a document entitled "Appeal" dated 7 November 2018.

(28) A document was annexed to that appeal document. It initially has two columns, one headed "Financial Payments" and the other "Gross Purchase Interest", the former comprising a description of the source of interest which the appellant has had to pay, and the latter being a column of figures. These figures appear to add up to £6,463.88 to which is added a further sum of £1,551.33, whose provenance is not clear to us. Beneath those entries in that column there is also an entry for wasted director costs of £5,200 below which there is a further entry of £1,248, again whose provenance is not clear to us. Those four amounts add up to £14,463.21. The spreadsheet then goes on with a new left hand side column which deals with input tax the periods October 2015 to July 2017 and the amount of VAT input tax totals £12,107.39. There is also a right-hand side column which sets out the interest on that input tax which amounts to £3,405.65. When that latter sum is added to the credit card interest of £14,463.21, the total amounts to £17,868.86 i.e. the figure as is set out in the appellant's notice of appeal.

11. We also find as facts all the facts which we found in our case management decision dated 18 February 2021, and, furthermore as set out at [8] above, that the amounts of input repaid by the respondents for the periods under appeal are the correct amounts, and that those amounts are set out in "Reduced to" column in the table at [21] below.

Submissions

12. The appellant submits in its grounds of appeal that it may not have been eligible

for repayment supplement and that repayment supplement should not have been paid. However, if it was eligible for repayment supplement, it has not been paid the proper amount of repayment supplement to which it was entitled on the repayments of input VAT which it received. However in its statement of case, it accepts that repayment supplement is a mandatory statutory right if a repayment return is delayed more than 30 days, but that HMRC had made no offer to pay nor paid repayment supplement during the "timeline of the dispute". It believes that the payments of repayment supplement that were made were authorised to deliberately prevent its claim for statutory interest. It claims that HMRC has been guilty of delays and errors. It claims interest under a variety of sections in the VAT Act 1994, including under section 84(8) of that Act which, the appellant claims, based on cases such as *Emblaze Mobility Solutions Ltd* in the F-tT and the Upper Tribunal *("Emblaze")* entitles the appellant to a commercial rate of interest and not just the statutory rate of interest. It also claims that there is Tribunal precedent for allowing payment of credit card interest. As regards costs, it considers that HMRC have acted unreasonably. At the end of its skeleton argument, the appellant seeks a number of orders, namely: Clarification as to whether the legislation pertinent to this case is section 78 VAT Act 1994 interest in cases of official error or section 79 VAT Act 1994 repayment supplement; payment of interest as per section 78 VAT Act 1994; payment of correct amount due from repayment supplement per section 79 VAT Act 1994; directors wasted costs to be paid at calculated costs, and credit card interest paid in full as per detailed account.

13. The respondents submit that:

(1) For the periods 01/15 to 10/15 the original claims have been so reduced so that no repayment supplement is due by dint of the operation of section 79(2)(c) VAT Act 1994.

(2) For the periods 01/16 to 07/17 repayment supplement has been paid to the appellant and this precludes payment of interest under section 78 VAT Act 1994 by dint of the operation of section 78(2). Furthermore interest under section 78 can only be paid where there has been an error on the part of HMRC and there has been no such error in connection with the repayments.

(3) If it is an issue in this appeal, then the repayment for period 10/17 does not attract repayment supplement since it has been reduced by such an amount so as to preclude repayment supplement under section 79(2)(c) VAT Act 1994.

(4) HMRC have not made any submissions regarding the appellant's claim for restitution at a commercial rate of interest, credit card interest, or costs.

14. In this appeal the burden rests with the appellant to show that it is entitled to the amounts claimed and it must do so to the civil standard of proof namely the balance of probabilities. In other words it is more likely than not that it is entitled to the amounts claimed.

15. We are grateful for the helpful submissions, both written and oral which have

been made by the parties representatives and which we have carefully considered in reaching our conclusions. However, in reaching those conclusions we have not found it necessary to refer to each and every argument advanced on behalf of the parties.

Discussion

Repayment supplement

16. HMRC's view is that repayment supplement is a penalty levied against HMRC for failing to reach a predetermined measure of efficiency i.e. failure to authorise a valid repayment return within 30 days from the original date of receipt by HMRC.

17. The appellant's initial view was that repayment supplement had to be claimed and that it was not entitled to repayment supplement since no such claim had been made. Our understanding is that the appellant then changed its view and now accepts that repayment supplement is mandatory. In its skeleton argument, it submits that repayment supplement is a form of compensation paid subject to certain conditions if HMRC does not issue a written instruction to pay a return or claim within 30 days of the receipt of the VAT return or claim.

18. In other words there is little between the parties as to the purpose of repayment supplement and the criteria which must be met for that supplement to be paid. It is our view that the appellant now accepts that payment is mandatory, and it is our view, too, that that acceptance is a reflection of the legislation since, paraphrased, the legislation provides that if the preconditions for a repayment of input VAT by HMRC are met, then that repayment "**shall** be increased by the addition of a supplement equal to 5% of that amount or £50 whichever is the greater." (emphasis added).

19. However, as far as a taxpayer is concerned, there is a sting in the tail of the legislation set out in section 79(2)(c) VAT Act 1994. This is set out above, but in essence means that if a taxpayer makes an inflated claim for repayment of input VAT which is subsequently reduced by HMRC by specified amounts, then no repayment supplement is due. The amounts are the greater of £250 or 5% of the amount of repayment claimed. In other words if HMRC reduce a repayment claim by the greater of £250 or 5% of that claim, there is no obligation on them to pay repayment supplement.

20. And that is what has happened for a number of the periods under appeal.

21. Set out below is a table of those periods together with the amounts originally claimed, amounts to which those claims were reduced by HMRC (and, as mentioned earlier in this decision, we have found as a fact that the amounts to which the repayments were reduced are correct) and the repayment supplement position adopted by HMRC.

VAT Period	Original Claim	Reduced to	HMRC Position
01/15	£1,785.76	£245.70	No RS
04/15	£4,133.66	£2,077.14	No RS
07/15	£2,274.84	£1,668.01	No RS
10/15	£1,390.72	£439.33	No RS
01/16	£2,082.70	£1,905.00	RS £95.25
04/16	£918.01	-	RS £50
07/16	£1,045.34	-	RS £52.26
10/16	£751.49	-	RS £50
01/17	£820.50	-	RS £50
04/17	£651.20	-	RS £50
07/17	£214.10	-	RS £50
10/17	£4,286.10	£3,050.60	No RS

22. For the VAT periods ending 01/15 to 10/15, the amounts claimed were all reduced by more than 5% so no repayment supplement was payable. Repayment supplement was however payable for the period 01/16 since the original claim was reduced by less than £250.

23. The position for periods 04/16 to 07/17 is slightly more complicated. For these periods HMRC have accepted that due to a lack of adequate paper trail, the appellant's repayment claims were delayed without reason due to a lack of documentation, and subsequently paid the appellant repayment supplement for those periods based on its original repayment claims.

24. Our view is that the amounts so paid by way of repayment supplement were accurately calculated.

25. Our understanding is that the appellant thinks that repayment supplement has been made for these periods in order to prevent it making a claim for interest under section 78 VAT Act 1994. He has provided no evidence of this. Without that evidence we cannot conclude that HMRC have acted in bad faith, and we reject the appellant's allegation of this. However given that the statutory interest rate which has applied throughout the period since 04/16 is 0.5%, we would observe that the appellant has done considerably better, financially, by having been paid this repayment supplement

than it would have done had it received interest at that rate. Interest at 0.5% in respect of the 04/16 repayment claim of £918.01 for a period of five years amounts to a mere £22.95. So why, we ask, might HMRC, acting in bad faith, pay the appellant nearly twice that amount. This illustrates the fallacious nature of the appellant's allegation.

26. To the extent that this appeal extends to a claim for repayment supplement for the period 10/17, we accept HMRC's submission that no supplement is due by dint of the amount of reduction that has been made to the appellant's original claim for repayment of input VAT.

27. So, as regards repayment supplement, we find that the amounts paid by HMRC are correct and we reject the appellant's claim that it is entitled to more repayment supplement than it has been awarded.

Interest

28. There are four relevant provisions in the VAT Act 1994 which relate to payment of interest on payments due from HMRC to a taxpayer.

29. The first of these is section 78 VAT Act 1994, the relevant parts of which are set out above, and which only applies where HMRC have made an error. The rate of interest payable under this section is the statutory rate which for the periods in question in this appeal was 0.5%. We return to this section later.

30. The second of these is section 84 VAT Act 1994 and in particular section 84(8). The appellant submits that in this appeal, that subsection is relevant and allows a court to order HMRC to pay interest at such rate as the Tribunal might determine. However subsection 84(8) was repealed in 2009 subject to the application of transitional and saving provisions which only apply where HMRC have notified a decision which is appealable under section 83 of the VAT Act 1994 before 1 April 2009. That is clearly not the case in this appeal, and so the provisions of section 84(8) are not relevant to this appeal, nor are the authorities on the interpretation of that subsection which the appellant has cited in its submissions (for example *Emblaze*). This Tribunal does not have power to award interest at a commercial rate, and we reject the appellant's submission on this point.

31. Nor does the Tribunal have power to award damages or some similar commercial restitution for credit card charges. Nor for the appellant being "out of the money" arising from any delay for the repayment of the input VAT. The Tribunal is a creature of statute and is governed by the statutory provisions relating to VAT and its rules. Unlike the High Court, it has no "inherent jurisdiction". And neither the VAT legislation nor the Tribunal's rules allow it to award interest save in accordance with the relevant VAT legislation.

32. Thirdly there is section 85A VAT Act 1994. This is set out above, and it can be seen that it only applies where the Tribunal determines the amount of credit to which an appellant might be due. Whilst section 85(1) of the VAT Act 1994 provides that where an appeal is settled by agreement it should be treated as if it were determined, that is not the situation in this appeal. We have already concluded, in our case

management decision of 18 February 2021, that the appellant's appeal in these proceedings does not include an appeal against the amount of input VAT which has been repaid to it by HMRC. That matter was not the subject of its appeal, and was not mentioned in its notice of appeal. We have concluded that in this appeal we are simply looking at whether the appellant is entitled to interest (including credit card interest), repayment supplement, and costs. It is no part of the appeal that the appellant has been denied an amount of VAT credit. So the appellant is not entitled to interest under these provisions.

33. Finally there is section 85B VAT Act 1994. This only applies however where a party makes a further appeal i.e. an appeal against a Tribunal's determination of an appeal under section 83. In other words it deals with appeals from the Tribunal's decision. In this appeal, the appeal is made to the Tribunal. And so section 85B VAT Act 1994 has no relevance to this appeal.

34. So the only possible statutory provision which would permit us to award interest to the appellant is section 78 VAT Act 1994, and this only applies where there has been an error by HMRC as a result of which a taxpayer has suffered one or more of four consequences. HMRC's view is that they have made no such error since they are not responsible for any errors that have given rise to the appellant's VAT repayments. And we accept that. However, if as a result of an error, the appellant suffered a delay in receiving those repayments, then interest under this section might be due. The appellant contends, in its skeleton argument, that HMRC admit that they have caused unnecessary delay and cites as evidence of that a letter dated 31 July 2018 in which HMRC state that "I am sorry about that and consequently uphold your complaint that we have delayed these payments without good cause."

35. However, that admission relates only to VAT periods 04/16 to 01/18. No such admission is made concerning VAT periods 01/15 to 01/16.

36. The relevance of this lies in the provisions of section 78(2) VAT Act 1994 which, paraphrased, does not require HMRC to pay interest on any amount on which repayment supplement has been paid. And of course repayment supplement has been paid by HMRC for the periods in which it has admitted delay.

37. No such admission has been made for the periods in which repayment supplement has not been paid.

38. So if the appellant is to establish a right to interest under section 78 VAT Act 1994 for those periods, it must also establish that HMRC has made an error as a result of which it has suffered delay in receiving its input tax repayments.

39. It has failed to do this. Its evidence that HMRC accepts that it has made an error does not relate to those periods in which no repayment supplement has been made. It has not made out its case for official error during those periods and thus it is not entitled to interest under section 78 VAT Act 1994 for the periods in which it has not been paid repayment supplement.

Costs

40. The appellant's position on costs seems to have fluctuated during the period between its notice of appeal in November 2018 and the case management hearing which took place on 10 February 2021.

41. The appellant's notice of appeal is dated 4 November 2018. In it, it refers to grounds for appeal which will be issued within 14 days from that date. Those grounds issued on 7 November 2018, included a claim for "Directors wasted costs to be paid at calculated costs". However, no schedule of costs was included with that claim.

42. However in the appellant's skeleton argument prepared for the hearing in October 2019, the appellant states that it "waives the right to legal costs in the spirit of Tribunal rules as the appellant is self-representing."

43. This in turn was contradicted by the appellant at that hearing when it stated that it was making a claim for costs but it had not, at that time, submitted any schedule of costs.

44. Subsequently, as set out below, a schedule was submitted, but then, in connection with the case management hearing in February 2021, the appellant submitted a brief email on 22 January 2021 reasserting its claim for interest bank charges and repayment supplement, but intimating that it would not pursue its claim for costs.

45. In order to make a valid claim for costs under Rule 10(3) of the First-tier Tribunal Rules, a schedule of costs or expenses claimed, in some detail, must be sent or delivered with that claim. We explained to Mr Turner at the hearing that in the absence of such schedule, the claim for costs was invalid and that should he wish to make a proper application for costs, he should consider that once we had delivered our decision. Following the hearing it was clear that we required additional information in order to dispose of this appeal, fairly and justly. We therefore issued directions for that additional information, but the directions did not make any provision for information regarding costs. However, somewhat opportunistically in our view, the appellant included with the information supplied in response to that direction, a schedule of costs.

46. Given that this was not submitted at the same time as the application for costs, it is not compliant with Rule 10(3), and does not cure the original defect. Notwithstanding that the appellant's position on costs is ambiguous, we reiterate the comments we made to Mr Turner at the hearing concerning costs, and that should he wish to make an application following release of this decision, then notwithstanding that the appellant appears to have resiled from its claim, it is open to it to do so. However, when doing so it should particularise the HMRC behaviour which it alleges is unreasonable and explain why any such unreasonable behaviour has caused it to incur its claimed costs.

Decision

47. For the foregoing reasons we dismiss the appellant's appeal.

Appeal rights

48. 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.

NIGEL POPPLEWELL

TRIBUNAL JUDGE
RELEASE DATE: 9 MARCH 2021