[2021] UKFTT 0457 (TC)

TC 08341

VAT – personal export scheme – appeal for retrospective use – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/01914

BETWEEN

JOHN DENTON **Appellant**

-and-

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

TRIBUNAL: JUDGE SARAH ALLATT

The Tribunal determined the appeal on 11 October 2021 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 30 April 2020 (with enclosures), and the full bundle for the case (109 pages).

DECISION

THE APPEAL

The decision under appeal is the decision to reject the Appellant's retrospective application to avail of the Personal Export Scheme (PES), in respect of the purchase of a vehicle.

1. The amount in dispute is £3,871.14.

2. The decision was issued on 27 February 2020, upheld by a review conclusion letter on 15 April 2020 and appealed on 30 April 2020.

BACKGROUND

3. Mr Denton purchased a Motor Vehicle (Car) in the UK, with VAT being charged on the purchase by the supplier. The vehicle was subsequently exported to Jersey on 23 October 2019.

4. All parties agree that the intention to export the car was present at the time of purchase.

5. All parties agree that had Mr Denton used the pre-export scheme, then it is likely that HMRC would have approved the zero-rating of the car by the supplier.

6. All parties agree that Mr Denton did not use the pre-export scheme.

7. On 24 October 2019 Mr Denton contacted HMRC's VAT Written Enquires Team to enquire about the process for claiming a refund of VAT charged on the purchase of the vehicle.

8. HMRC replied on 8 November 2019, directing Mr Denton to the HMRC's Personal Transport Unit.

9. Later in November Mr Denton wrote to the Personal Transport Unit giving details of the purchase and requesting a refund, and also confirming Jersey input VAT had been charged on the importation.

10. On 10 December 2019 HMRC wrote to Mr Denton informing him that he was not entitled to a refund of VAT by means of the Personal Export Scheme. It appears that this letter was not received by the appellant who wrote again in January 2020. There was further correspondence culminating in a formal refusal letter being issues. Mr Denton requested an independent statutory review. This was issued on 15 April 2020 and then Mr Denton made an in time appeal to this Tribunal.

THE LAW

11. The law is contained in sections 4 and 7 of the VAT Act 1994, VAT Regulations 132 and 133 of the VAT Regulations 1995, and VAT Notice 707, some of which has the force of law.

Section 4 of the VAT Act 1994:

> 4(1) VAT shall be charged on any supply of goods or services made in the United Kingdom where it is taxable supply made by a taxable person in the course of furtherance of any business carried on by them.
>
> 4(2) A taxable supply is a supply of goods or service made in the United Kingdom other than an exempt supply.

Section 7 of the VAT Act 1994 outlines the place of supply of goods.

> 7 (2) Subject to the following provisions of this section, if the supply of any goods does not involve their removal from or to the United Kingdom they

> shall be treated as supplied in the United Kingdom if they are in the United Kingdom and otherwise shall be treated as supplied outside the United Kingdom.

Section 30 of the VAT Act 1994, subject to certain provisions, allows for the zero rating of supplies.

> **30(8)** Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where–
>
> (a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the member States or that the supply in question involves both–
>
> I. the removal of the goods from the United Kingdom; and
>
> II. their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and
>
> (b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled.

Regulation 133 of the VAT Regulations 1995 says:

> 133. The Commissioners may, on application by any person who intends to depart from the member States within 9 months and remain outside the member States for a period of at least 6 months, permit him within 6 months of his intended departure to purchase, from a registered person, a new motor vehicle without payment of VAT, for subsequent export, and its supply, subject to such conditions as they may impose, shall be zero-rated.

The 'such other conditions' are outlined in parts of Notice 707, and require an application by the purchaser of the vehicle to use the scheme. Notice 707 also says

> "If VAT is shown on the customer's invoice: A vehicle purchased at a price including VAT will not be eligible for a refund even if the customer later exports it to a destination outside the UK or EU."

SUBMISSIONS BY THE PARTIES

12. Mr Denton has written a significant amount of background to his appeal both in letters to HMRC, contained in the bundle, and in the Notice of Appeal.

13. His appeal is that his entire circumstances are taken into account and that a retrospective claim for a refund is allowed.

14. He accepts that he did not use the Pre-Export Scheme and he now knows he should have done.

15. HMRC contend that they were correct the reject the application for a refund. The Personal Export Scheme is a pre-approval scheme only. Mr Denton did not apply, and hence VAT was correctly charged by the supplier and a refund cannot be given.

DECISION

16. The Tribunal, has considerable sympathy with Mr Denton for his particular circumstances. However, the Tribunal is only able to allow appeals where the law has not been correctly applied.

17. It is very clear that the conditions that would have allowed Mr Denton to use the Pre-Export Scheme were not met.

18. It is clear that HMRC have no authority to allow the scheme to be used retrospectively.

19. The Tribunal has no power to change that decision based on personal circumstances of the Appellant.

20. Therefore this appeal is DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

21. 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.

SARAH ALLATT
TRIBUNAL JUDGE

Release date: 29 NOVEMBER 2021