



Neutral Citation: [2024] UKFTT 00365 (TC)

Case Number: TC09154

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Held by video

Appeal reference: TC/2023/07524

Value Added Tax – Input tax – taxpayer claimed refund of input VAT – whether sufficient records to verify claim for repayment – no - appeal dismissed.

**Heard on: 21 February 2024
Judgment date: 4 March 2024**

Before

**TRIBUNAL JUDGE KELVAN SWINNERTON
MEMBER MR MOHAMMED FAROOQ**

Between

9 UP CONSULTANT LIMITED

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr J Vyse.

For the Respondents: Mr David Corps, litigator of HM Revenue and Customs’ Solicitor’s Office.

DECISION

INTRODUCTION

1. The Appellant appeals against the decision of the Respondents dated 7 February 2023 to deny input tax credit in the sum of £1,754.75 which was claimed within the VAT return of the Appellant for the period 10/22 (24 January 2022 to 31 October 2022).
2. The input tax was claimed under section 25(3) of the Value Added Tax Act 1994 (“VATA94”) and the decision to deny credit is appealable under 83(1)(c) VATA94.

THE HEARING AND EVIDENCE

3. We considered all of the documentation provided which comprised of a hearing bundle of 293 pages which included, amongst documents, a Notice of Appeal dated 4 April 2023, the Statement of Reason of the Respondents dated 27 June 2023, as well as legislation and authorities. We also heard evidence from Mr Alexander Tsui (of the Appellant) who adopted his witness statement of 10 November 2023 and from Mr Sam Cross and Ms Jessica Wilkinson of the Respondents who adopted their witness statements dated 26 October 2023 and 24 October 2023 respectively.

BACKGROUND

4. The Appellant was incorporated on 24 January 2022.
5. Since incorporation, Mr On Kin Alexander Tsui has been the director and secretary of the Appellant.
6. The Appellant applied for VAT registration on 26 July 2022 with a requested date of 24 January 2022.
7. The Appellant was required to submit its first VAT return for the period 24 January 2022 to 31 October 2022.
8. On 2 December 2022, the Appellant submitted its return for the period 10/22. That return detailed output tax of nil and input VAT of £1754.75.
9. On 21 December, HMRC wrote to the Appellant at its principal place of business (“PPOB”) stating that it was going to be checking the VAT return of the Appellant and the claim for repayment of VAT for the period of 10/22 and stated that further information was required before payment of the amount of input tax credit of £1754.75 could be made.
10. A deadline of 6 January 2023 was specified for provision of that information by the Appellant. That letter was not copied to the agent of the Appellant.
11. Subsequently, HMRC wrote to the Appellant’s agent to seek to obtain a response to the letter of 21 December 2022.

12. The agent of the Appellant, Mr Vyse, advised HMRC by e-mail on 12 January 2023 that the Appellant's PPOB had changed over the holiday season/postal strike. It does not appear that the change in the PPOB of the Appellant was notified to HMRC previously.

13. On 2 February 2023, the Appellant's agent sent by e-mail to HMRC some VAT data files.

14. On 6 February 2023, HMRC by e-mail informed the Appellant's agent that HMRC had not received sufficient information to verify the claim for input tax credit. It is stated: "*We understand that you have now sent us your VAT workings and Amazon transaction reports, but we still have not received your 5 highest purchase invoices and completed questionnaire. Please provided [provide] this by 13 February 2023 for us to review them*".

15. That e-mail attached to it a copy of a decision letter (dated 7 February 2023) refusing the claim for input vat credit. The section entitled 'What to do if you disagree' stated that the taxpayer could accept the offer of HMRC of a review of the decision.

16. Subsequent to receipt of HMRC's e-mail of 6 February 2023, the Appellant's agent replied by e-mail of 6 February 2023 attaching a sample of invoices and stated that he would reply more fully by 13 February 2023. That e-mail stated that the Appellant was seeking to establish a trade in the grey market for export of luxury UK retail goods.

17. On 7 February 2023, the Appellant's agent provided further information by e-mail to HMRC consisting of highest purchase documents.

18. On 10 February 2023, the Appellant's agent sent an e-mail that queried procedural matters.

19. On 15 February 2023, the Appellant's agent requested a review of the decision to deny input tax.

20. On 28 February 2023, HMRC acknowledged the request for a review noting that the review period expired on 31 March 2023 and stated that the taxpayer would be contacted if the review officer was unable to complete the review by that date.

21. On 30 March 2023, the Appellant's agent wrote to HMRC stating: "*My client has instructed me to decline HMRC's proposal to the extension to the VAT review period*".

22. On 3 April 2023, HMRC wrote to the Appellant's agent stating that as the Appellant had not consented to an extension of time in which to carry out a review, the review officer had not been able to carry out the review further and the decision dated 7 February 2023 (issued in the e-mail of 6 February 2023) was upheld.

THE LAW

23. Article 226 of the Principal VAT Directive (2006/112/EC) ("the Principal VAT Directive") sets out mandatory particulars to be contained in a VAT invoice.

24. The Principal Directive is transposed into domestic law by VATA94 and regulations made under it.

25. The relevant regulations are the VAT Regulations 1995 (“VATR95”).
26. Section 24(1) of VATA94 states:
“Subject to the following provisions of this section, “input tax”, in relation to a taxable person, means the following tax, that is to say -
(a) VAT on the supply to him of any goods or services;
(b); and
(c) VAT paid or payable by him on the importation of any goods..., being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.
27. Section 24(6)(a) VATA94 states:
“for VAT on the supply of goods or services to a taxable person ... and VAT paid or payable by a taxable person on the importation of goods ... to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases; ...”.
28. Regulation 13 of VATR95 is entitled ‘Obligation to provide a VAT invoice’.
29. Regulation 13(1) states:
“Save as otherwise provided in these Regulations, where a registered person (P)-
(a) makes a taxable supply in the United Kingdom to a taxable person, or
(b) makes a supply of goods to a person in a member State for the purpose of any business activity carried out by that person and P is identified for the purposes of VAT in Northern Ireland; or
(c) receives a payment on account in respect of a supply of goods that P has made or intends to make from a person in a member State and P is identified for the purposes of VAT in Northern Ireland,
P must, unless paragraph (1ZA) applies, provide such persons as are mentioned with a VAT invoice”.
30. Regulation 14 of VATR95 is entitled ‘Contents of a VAT invoice’.
31. Regulation 14(1) states:
“Subject to paragraph (2) below and regulation 16... and save as the Commissioners may otherwise allow, a registered person providing a VAT invoice in accordance with regulation 13 shall state thereon the following particulars-
(a) a sequential number based on one or more series which uniquely identifies the document,
(b) the time of the supply,
(c) the date of the issue of the document,
(d) the name, address and registration number of the supplier,
(e) the name and address of the person to whom the goods or services are supplied,

- (f) ...
- (g) a description sufficient to identify the goods or services supplied
- (h) for each description, the quantity of the goods or the extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in any currency,
- (i) the gross total amount payable, excluding VAT, expressed in any currency,
- (j) the rate of any cash discount offered,
- (k) ...
- (l) the total amount of VAT chargeable...,
- (m) the unit price ...

32. Regulation 16 of VATR95 is entitled ‘Retailers’ invoices’.

33. Regulation 16(1) states:

“Subject to paragraph (2) below, a registered person who is a retailer shall not be required to provide a VAT invoice, except that he shall provide such an invoice at the request of a customer who is a taxable person in respect of any supply to him; but, in that event, if, but only if, the consideration for the supply does not exceed £250 and, where the retailer is identified for the purposes of VAT in Northern Ireland, the supply is other than to a person in another member State, the VAT invoice need only contain the following particulars-

- (a) the name, address and registration number of the retailer,*
- (b) the time of the supply,*
- (c) a description sufficient to identify the goods or services supplied,*
- (d) the total amount payable including VAT, and*
- (e) for each rate of VAT chargeable, the gross amount payable including VAT, and the VAT rate applicable”.*

34. Regulation 29 is entitled ‘Claims for input tax’.

35. Regulation 29(2) states:

“At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of–

- (a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;”.*

DISCUSSION

36. In summary, the Appellant in the grounds of appeal states that the decision of HMRC dated 7 February 2023 was not made to the best judgment of HMRC because HMRC failed to consult documents that had been provided on behalf of the Appellant within the specified deadlines. It was stated, therefore, that the decision was not made based upon the available information at that time. The Appellant contended that the decision of HMRC must be a

dishonest, vindictive or capricious act and also that the decision provided no citation of powers and is invalid for fatal want of form.

37. HMRC, in their Statement of Case, do not accept that the decision letter of 7 February 2023 is invalid owing to a lack of citation of powers nor that the decision is invalid for fatal want of form. HMRC accept that the decision as set out in their letter of 7 February 2023 is the result of their compliance check. HMRC maintain that the decision of 7 February 2023 is a decision to deny input tax credit and that it is not an assessment to tax under section 73(1) VATA94.

38. In respect of the post-dating of their letter of 7 February 2023, HMRC state that the letter was to be posted from the premises of HMRC on 7 February 2023 and was attached, in advance of that date, to the e-mail sent to the Appellant on 6 February 2023 which, it is openly acknowledged by HMRC, caused confusion to the Appellant and its agent.

39. At the hearing, Mr Vyse on behalf of the Appellant submitted that the compliance check of HMRC had been undertaken with undue and unnecessary haste and, further, that it had not been carried out correctly. Mr Vyse emphasised that HMRC had not followed its own guidance in making the decision under appeal. It was submitted also that the Appellant had provided as much documentation and other information as it was reasonably able to do taking into account that the Appellant was operating in the grey market for luxury goods.

40. Mr Corps, on behalf of the Respondents, submitted at the hearing that the provision by the Appellant of VAT invoices was not a 'nice-to-have' requirement but a fundamental requirement. It was stated that the Appellant had the opportunity to obtain valid VAT invoices but that none had been provided at the time of the decision of 7 February 2023 nor had any valid invoices been provided by the Appellant to date. Mr Corps stated that HMRC had considered fairly all of the information that was provided by the Appellant at the time of making the decision under appeal.

41. In respect of a consideration of the circumstances in this case, Regulation 14(1) VATR95 set out above details the particulars that are required for provision of a VAT invoice in accordance with Regulation 13 of VATR95. Regulation 14(1) specifies, amongst other particulars, that these particulars should include the name, address and registration number of the supplier; the name and address of the person to whom the goods or services are supplied; a description sufficient to identify the goods or services supplied; for each description the quantity of the goods or the extent of the services and the rate of VAT and the amount payable excluding VAT expressed in any currency; and the total amount of VAT chargeable.

42. At the hearing, it was not submitted on behalf of the Appellant that the invoices and receipts provided by the Appellant in support of its claim for input VAT relief, as at 6 February 2023 or to date, meet the requirements of Regulation 14 of VATR95. We find that none of the invoices or receipts submitted on behalf of the Appellant in support of its claim for input VAT relief contain the particulars specified in Regulation 14 of VATR95.

43. To give an example, the invoice dated 3 August 2022 from Hermes was provided with a receipt (relating to a Bandale Femme Oran Veau Box) and is addressed to Ms Venus Tai with an address of "NA NA China". The invoice does not state the name of the Appellant nor

does it state the address of the Appellant. Ms Venus Tai is the wife of Mr Alexander Tsui of the Appellant.

44. Mr Tsui gave evidence at the hearing that Ms Venus Tai is not an employee nor an officer of the Appellant and neither is she connected officially with the Appellant in any other capacity. Mr Tsui explained that his wife went shopping with him to make the purchases and to help him choose the trend. Mr Tsui gave evidence at the hearing that at no point had HMRC been informed that Ms Venus Tai was his wife. We find that this invoice does not contain the particulars as specified in Regulation 14 of VATR95.

45. To give another example, the receipt dated 8 August 2022 from Harrods relates to Chanel Fleabags (in the total amount of £4,055). This receipt does not detail the name nor the address of the purchaser. Nor does it detail any particulars at all relating to VAT. We find that this document does not contain the particulars as specified in Regulation 14 of VATR95.

46. In his witness statement, Mr Tsui referred to having taken advice to ensure that the business processes of the Appellant were fully documented. It is stated: *“I took advice from my accountants to ensure purchase VAT and proof of export shipping and proof of sales were fully documented by my business processes”*.

47. At the hearing, on cross-examination Mr Tsui gave evidence that he had the opportunity to obtain valid invoices that met the requirements of Regulation 14 of VATR95 but that he had not taken up the opportunity to do so at the time of purchase or subsequently.

48. Both Mr Vyse and Mr Corps referred us to various cases which included the cases of *Van Boekel v Customs and Excise Commissioners [1981] STC* and *Tower Bridge GP Limited v The Commissioners for Her Majesty’s Revenue and Customs [2022] EWCA Civ 998*. In relation to the mandatory particulars to be contained in a VAT invoice, we were directed by Mr Corps to paragraph 76 of *the Tower Bridge decision* which states: *“In my judgment the Advocate General’s opinion could not be clearer about the need to comply with the requirements of article 226 of the PVD as a precondition of the exercise of the right to deduct”*.

49. The documentation made available to us included HMRC Guidance in the form of VAT Notice 700. Part 16 of that Guidance relates to VAT invoices. Part 16.3 of the Guidance is entitled ‘Information required on a VAT invoice’.

50. Part 16.8.1 of the Guidance is entitled ‘What to do if you hold an invalid VAT invoice’. This states: *“If you hold an invalid invoice the first thing you must do is go back to your supplier and request an invoice which meets these requirements [with reference to 16.3]. If you cannot do this, and can evidence why, you’ll need to satisfy HMRC that the following conditions have been met...”*. Those requirements include, amongst other requirements, that the supply takes place in the UK, it is taxable at the standard or reduced rate of VAT, and that the supply is made to the person claiming the input tax.

51. It was clear to us from the evidence of Mr Tsui at the hearing that the Appellant had not gone back to the suppliers to request invoices that met the requirements. Mr Tsui readily acknowledged that at the hearing. We find that the Appellant did not go back to (and has not gone back to) any supplier at any time to request an invoice that meets the requirements. It

was clear to us also, and we so find, that the Appellant has not evidenced why that cannot be done.

52. Mr Vyse submitted that Harrods and Hermes would not provide VAT invoices to the Appellant because, in essence, they sought to suppress the grey market in luxury goods and wanted to suppress those, like the Appellant, from buying luxury goods in the UK and then selling those same goods in another jurisdiction at a higher price. No evidence was provided to us to support that contention. In any event, even if that contention is correct, we find that it does not assist the Appellant in, nonetheless, having to comply with the requirements of Regulation 14 or with what is stated in the Guidance referred to above.

53. The witness statement of Ms Wilkinson states that she considered the evidence submitted by the Appellant after the decision made by Officer Cross “*but decided it was appropriate not to change the decision he had made*”. It is stated: “*As further information had also been supplied as well as requesting a review, I made the decision to consider the information received for the entire case to see if I could change the decision that had been made. I did this by treating the case as if I had picked it up from the first response, which is when the trader or agent submits a completed G-form, which is an online questionnaire that provides information about the business on the government gateway, or a completed questionnaire with supporting invoices*”.

54. In her statement, Ms Wilkinson refers (amongst other points) to having considered the receipt dated 8 August 2022 referred to above (in the sum of £4,055) and concluded that there was nothing to link the receipt to the business. In respect of the invoice dated 3 August 2022 referred to above from Hermes, Ms Wilkinson stated: “*I checked Companies House to see if I could link Ms Venus Tai, who the invoice was addressed to, to the business. When I could not, I made the decision to disallow the invoice ...*”. At the hearing, Ms Wilkinson was asked on cross-examination if she knew who Ms Venus Tai was and she answered that she did not. It is clear from the statement of Ms Wilkinson that she also considered the Metro bank statements provided for the Business Bank account of the Appellant.

55. With respect to the exercise of discretion by HMRC, this was addressed in *the Tower Bridge decision* (principally at paragraphs 121 to 132). Mr Corps stated that consideration of the exercise of discretion had not been stated expressly by HMRC in writing but that it would have taken place implicitly.

56. The proviso to Regulation 29(2) confers a discretion on HMRC to accept alternative evidence to the purchase invoice which a person claiming a deduction of input VAT must ordinarily have. The exercise of discretion can only be challenged by the taxpayer on the ground that it was a decision that no reasonable body of Commissioners could have reached. The burden lies on the taxpayer to demonstrate this based upon the facts available to HMRC at the time that the decision was taken.

57. In relation to discretion, it is stated in *the case of Tower Bridge* that the role of the First Tier Tribunal is supervisory only. In that respect, we can see no basis to conclude that the decision of the Respondents is unreasonable or irrational or procedurally irregular and neither do we find that there is any basis for the contention that the decision of HMRC is dishonest, vindictive, capricious or invalid for fatal want of form or otherwise.

58. Mr Cross of HMRC made a decision on 6 February 2013 (confusingly dated 7 February 2023) which was based upon the information available to him at that point in time. That was at a point in time more than 6 weeks after the letter of HMRC to the Appellant dated 21 December 2022. That was, we find, sufficient time for the Appellant in which to provide the requested information.

59. Mr Cross accepted that he did not consider the information provided by the Appellant's agent on 6 February 2023. In any event, the Appellant had the option for HMRC to review its decision but did not consent to an extension of time in which HMRC could do so. That said, the Appellant has still not provided invoices that meet the requirements of Regulation 13 and has still not, it would appear, approached the suppliers to obtain valid invoices. Additionally, Ms Wilkinson has considered the evidence submitted after the decision of Mr Cross and decided that it was not appropriate to change the decision. We agree.

DECISION

60. Our decision is that the Appellant is not entitled to input tax credit as claimed. We dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

61. 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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**KELVAN SWINNERTON
TRIBUNAL JUDGE**

Release Date: 4th March 2024