TC01983

Appeal number: TC/2011/04646

INPUT TAX – Input tax recovery claim by Appellant refused as output tax not accounted for in respect of disposal of goods: Appeal refused.

FIRST-TIER TRIBUNAL
TAX CHAMBER

SCOTTISH FOOTBALL LEAGUE **Appellant**

- and -

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

TRIBUNAL: JUDGE GRETTA PRITCHARD, BL MBA, WS
SCOTT RAE, LLB WS

Sitting in public at George House, 126 George Street, Edinburgh on Tuesday 13 March 2012

Gary Moore for the Appellant

Bernard Haley, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Background

1. This is an Appeal against a refusal by HMRC of an Input Tax Recovery Claim made by way of a voluntary disclosure by the Scottish Football League (SFL) for the period 1 May 2007 – 1 May 2010. The SFL claimed that it was entitled to a reclaim of the Input Tax on medals and flags (hereinafter collectively referred to as medals) presented to the winners of the First, Second and Third Division League Points Championships. The refusal was confirmed on 3 March 2011 which is treated here as the date of decision. The decision was reviewed but not revised on 27 May 2011.

The hearing

2. The witness for the SFL was Mr David Longmuir the Chief Executive who was credible. He was extremely helpful in explaining the construction of the SFL and parts of the Constitution as a membership organisation. The only members are the Scottish football clubs of the First, Second and Third Divisions. Mr Peter McKenzie, the decision-maker for HMRC also gave evidence and was credible. The written evidence consisted of one bundle which was paginated. Where reference is made to any page it shall be treated as repeated here. In addition the Constitution and Rules of the SFL were made available to the Tribunal. The SFL was represented by Mr Gary Moore of VAT Services (Scotland) Ltd. HMRC was represented by Mr Bernard Haley.

3. Legislation: Value Added Tax Act 1994 (VATA 1994)

(a) Section 4 which states:

"4. Scope of VAT on taxable supplies

(1) VAT shall be charged on any supply of goods or services made in the United Kingdom where it is a taxable supply made by a taxable person in the course or furtherance of a business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply".

(b) Section 24 which states:

"24. Input tax and output tax

(1) 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.

(c) Section 81 which states:

…

"81(3) Subject to subsection 1 above, in any case where –

(a) an amount is due from the Commissioners to any person under any provision of this Act and

(b) that person is liable to pay a sum by way of VAT, penalties, interest, or surcharge,

The amount referred to in paragraph (a) above shall be set against the sum referred to in paragraph (b) above and, accordingly to the extent of the set-off, the obligations of the Commissioners and the person concerned shall be discharged".

Note. Reference to subsection 1 not relevant.

(d) Schedule 4

MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES

Section 5

5. (1) Subject to sub-paragraph (2) below, where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, that is a supply by him of goods.

(2) Sub-paragraph (1) above does not apply where the transfer or disposal is –

(a) a business gift the cost of which, together with the costs of any other business gifts made to the same person in the same year, was not more than £50; …

(2ZA) In sub-paragraph (2) above –

"business gift" means a gift of goods that is made in the course or furtherance of the business in question;

"cost", in relation to a gift of goods, means the cost to the donor of acquiring or, as the case may be, producing the goods;

"the same year", in relation to a gift, means any period of twelve months that includes the day on which the gift is made.

(e) Schedule 6

VALUATION: SPECIAL CASES

Section 19

6. (1) Where there is a supply of goods by virtue of –

…

(b) paragraph 5(1) … of Schedule 4 but otherwise than for a consideration; …

(2) The value of the supply shall be taken to be –

(a) such consideration in money as would be payable by the person making the supply if he were, at the time of the supply to purchase goods identical in every respect (including age and condition) to the goods concerned; …

4. **HMRC Guidance**

1. Public Notice No 700 paragraph 8.9.1 which states:

"An article is a gift where the donor is not obliged to give it and the recipient is not obliged to do or give anything in return. Competition prizes are usually treated as gifts.

A gift of goods is normally a taxable supply and VAT is due on the cost of the goods…. VAT is not due on certain gifts of goods (see 8.9.3 below) ….".

2. Public Notice No 700 paragraph 8.9.3 states:

"Gifts on which VAT is not due. VAT is not due on some types of gift. You do not make a supply when you made a gift of:

- Goods which cost you £50 or less – excluding VAT. The goods must be given for business reasons and not be part of a series or succession of gifts to the same person; …."

3. Public Notice No 701/5 paragraph 9 which states:

"9. Prizes, prize money and appearance money

9.1 …..

The following table describes how you should treat various types of prices.

Type of Prize	Example	Treated as	Consequences
Goods	sports equipment, car, trophy (if owned permanently by the winner)	business gifts	You must account for output VAT based on the cost of the goods to you, unless the cost of the individual prize to you was £50 or less excluding VAT. However, you can deduct the input tax incurred on the purchase of the goods.

5. Case law

Customs and Excise Commissioners v *Professional Footballers Association (Enterprise) Ltd* (1990) 5 BVC 164. This case concerned the award of prizes at a dinner specially convened for the purpose of the awards. It was **held** that the output tax on the charge for the dinner ticket included the output tax on the awards, the presentation of which was part of the supply of the whole event.

6. Facts found

1. The Scottish Football League (SFL) is a membership organisation limited to the Scottish football clubs of the First, Second and Third Divisions. Its objects are to promote and extend the game of football. It is a VAT registered business carried on at Hampden Park, Glasgow. The SFL was registered for VAT purposes on 1 April 1973 under VAT registration number 261 4766 52. Its registration is extant.

2. When the League Cup Final (the Cup Final, a knockout championship) is played, those attending the match know that one or other of the cup finalists will become the League Cup holders that day. HMRC consider in these circumstances that the output tax on the charge for the ticket includes the output tax on the awards which are certain to be made that day. The contest for the League Cup includes not only the clubs in the SFL First, Second and Third Divisions but also the clubs in the Scottish Premier League. As the game is played at a neutral venue, neither of the participating clubs is entitled to collect the gate money.

3. However the League Division Championships (points championships) have awards for each of the First, Second and Third Division club winners. The results cannot be determined at a single match with certainty most years. There may be a season when one team is so far ahead and so few matches remain, there is more certainty but that is unusual.

4. Mr Longmuir explained and the Tribunal finds that it sometimes happens that out of several matches on one day it could be any of several clubs which will be entitled to a trophy. Mr Longmuir explained that in relation to a League Championship he can, along with a representative of the Scottish League sponsors Irn Bru, the soft drinks manufacturer, wait at a helicopter pad in Cumbernauld. Immediately the result is known they fly to the match venue for the presentation of the trophy and medals. It can add a great deal to the excitement of the points championship win. The Championship trophy itself remains the property of SFL. The players and officials are presented with gold medals each to a value of £450. The winning club is also presented with a flag.

5. A number of years before the Input Tax Recovery Claim which is the subject of this appeal a decision was made on this matter. On 7 June 1996, Mr Peter McKenzie of HMRC who has dealt with the SFL VAT matters and many other football VAT matters for a number of years, had set out his understanding of the position with regard to the VAT treatment of the provision of medals for the divisional points championships. He confirmed that input tax recovery would be allowed as the medals were regarded as gifts and output tax would be due if the value of an individual item exceeded £15 which was the monetary value limit in that financial year. The reason he gave was that any divisional points championship match would be conducted at a club venue. This differs from the Cup Final. It is at a neutral venue. For the Cup Final the output tax on the ticket is as found above collected by the SFL as opposed to either of the clubs; by contrast when playing at a venue on the day the divisional points championship winner becomes known, the home club collect gate money. So the ticket for the divisional points championship match which will be at a home club where the ticket money goes to the home club, could not in his view include output tax on the medals.

6. Following that letter and the issuing of an assessment to VAT in 1996 in respect of output tax due on medals already presented, an arrangement was made that SFL blocked input tax recovery on the purchase of the medals so did not then have to account for output tax on the presentation of the medals. This remained the arrangement until November 2010 in terms of s81 VATA 1994.

7. On 22 November 2010 Mr Gary Moore, the SFL representative, wrote advising HMRC that he had considered the issues outlined above and considered the input tax recovery should be permitted without output tax being recovered on the medals because the medals were not a gift but were a contracted award for the points championship in terms of the Constitution and Rules of the SFL (Rule 96.1).

8. Rule 96.1 states:

> "The League shall present to each of the Championship Clubs of the First, Second and Third Divisions a flag and 20 gold medals, the value whereof to be fixed by the Board".

9. The Tribunal finds that the matter of the contracted requirements to provide medals is not inconsistent with the definition of business gift as found in the VAT legislation since what is actually happening when the divisional points championship trophy is presented is that there is no transfer or disposal. However, when the medals are presented there is a transfer or disposal. "Gift" as used in the VAT legislation is in the view of the Tribunal intended to cover the fact of no payment being made, but certainly includes transfer or disposal. This creates the supply for Output Tax to arise.

10. The Oxford English Dictionary (OED) defines "gift" as "n.(a) a transfer of property in a thing, voluntarily, and without any valuable consideration, (b) ….

11. The Tribunal finds the SFL is a membership organisation and the element of gift is not removed by the terms of the Constitution which effectively by the consent of the members voluntarily when they join permits and empowers the SFL to make gifts of medals rather than making a charge to the relevant club for that supply to it and its team. Since the value can be decided by the Board there is not a lot a club could do if the SFL decided on very cheap medals. They could actually be worth less than £50 when no output tax would be due.

12. In his letter of 22 November 2010 Mr Moore went on to attempt to equate the divisional points Championship with the Cup Final, but obviously could not equate the output tax similarly to the Cup Final because the ticket sales for the divisional points Championships are collected by the home club. He chose instead to ask HMRC to consider output tax on other supplies engendering SFL income to be deemed to include the provision of medals. In particular he argued that the sponsorship monies from Irn Bru for all three Divisions should come into that category as a Director of Irn Bru always made the presentation of the League Championship. He also considered copyright royalties, broadcasting fees and videos, and annual membership subscriptions should be taken into account.

13. Mr McKenzie replied on 3 March 2011 (the decision letter) explaining that business gifts are further defined in Public Notice 700, paragraph 8.9 and Public Notice 701/5, paragraph 9.1. He referred to a "trophy" being a business gift. Trophy is shown as being "if owned permanently by winner". The OED defines trophy (after many references to war and victory) as "2 … (b) anything serving as a token or evidence of victory, valour, skills, power etc;" The Tribunal are therefore of the opinion that it could include medals.

14. Mr McKenzie went on to consider the output tax collected on other sponsorship, betting and broadcasting funds. It became apparent there had been discussion with Mr Moore. Mr Longmuir gave evidence with regards to the sponsors and the Tribunal finds that Irn Bru obtain field advertising and the right to present the trophy and medals to the winner of the Scottish League Points Championship. No evidence was led with regard to the Second or Third championship winners presentations.

15. The income from the copyright royalties for the Licensed Bookmakers appeared totally commercial in nature and related more to outcomes of matches at every level including the League and Alba Cups which are outside the consideration of this Tribunal. Mr McKenzie clearly considered there was some merit in the broadcasting rights as the finals might attract more viewers but also included League Cup rights. Mr McKenzie was of the opinion that although there was merit, that, given the televising of different matches, although the finals would have an attraction, it was not all that the broadcasters were purchasing. He considered in these circumstances output tax on the medals could not be attributed there.

16. Annual membership fees were not discussed but since they were less than the cost of the medals or even of the output tax, that was understandable.

17. On 16 March 2011 Mr Moore sought a reconsideration and again reiterated his view that the medals were not a gift in terms of Notice 700. He also went on to describe in a very forceful argument that the medals were a right in terms of paragraph 96.1 of the Constitution and as such an entitlement of the winners of the competition for the points championships of the First, Second and Third Divisions. He also referred to an internal HMRC document not available to the Tribunal. This is VSPORT 4000 – Sports Competitions. That guidance according to Mr Moore specifies that payment of a fee to enter a competition is a taxable supply. He argued that that added strength to the argument that SLF is running a taxable organisation and as such directly attributable costs should be allowed input tax recovery. Mr Moore is correct. Input tax is recoverable in the hands of a VAT trader who then disposes of the goods for value and charges VAT on the supply. The problem here is the issue of "for value" in the disposal. Mr Moore has asked himself the wrong question. HMRC have a right of set off not available to the man in the street in Scotland. So they have denied the right because output tax is not to be recovered.

18. There was always input tax recovery available. It was only refused when it was clear that no output tax was to be accounted for. Their special blocking arrangements were agreed in 1996, in terms of Section 81 VATA 1994.

19. What Mr Moore then goes on to argue is that all that he has said adds strength to his input tax recovery claim in isolation. This is after all an appeal against a refusal of an input tax recovery.

20. The real problem for this Tribunal was the claim not to charge output tax despite the appeal being against the refusal of input tax recovery. In a sense SFL is entitled to have the input tax recovery claim allowed but that is in breach of its standing arrangement with the Revenue, blocking the input tax recovery whilst not charging output tax.

21. Neither party addressed the Tribunal on HMRC's right of set off.

Submissions for HMRC

7. Mr Haley submitted that the Tribunal should take account of the legislation. He regarded the guidance in the Public Notice as using fairly loose terminology in dealing with disposal of business assets without a consideration. He was satisfied Schedule 4 set matters clearly at paragraph 5 on the transfer of assets by SFL so that they no longer formed part of their assets as being a taxable supply. The Revenue had considered the arguments about the output tax being collected from a different source such as sponsors, bookmakers and broadcasters and even members. However, HMRC had not found a direct link between any of these bodies and the points championship awards for the relevant First, Second and Third Division teams. The distinction of identification of the Cup Final winner and the fact that SFL collected the gate money for the final provided the link to differentiate the output tax on ticket money for the Cup Final where the ticket included attending not only the match but the presentation of the cup and medals. This differs from the position of the League Points Championship. The ticket money for the determining match is collected by the home club. The identity could not always be established as the result of a single match on a single separate day from other matches as the outcome might only be determined on final results of several matches on one day. So the reliance on the Professional Footballers Association case was, in his view, only available to HMRC as it so specifically related to the presentation of the awards actually being made at a dinner arranged solely for that purpose. So the dinner ticket was declared to include the presentation of the medals. He also submitted the Constitutional provision could not contract out of the legislation. As a result no repayment of input tax would be made where no output tax was to be accounted for in respect of the supply of the goods.

Submissions for Appellant

8. Mr Moore had already covered much of the ground in his eliciting of evidence as he was the writer of the correspondence referred to from 22 November 2010 to HMRC on behalf of SFL. He asked the Tribunal to consider the following matters:

1. That Notices 700 and 701 do not have the force of law.

2. Schedule 4 only applies to gifts.

3. Legislation is only mandatory if it is shown that a gift was made.

He submitted that the SFL is an organisation, one of whose objectives is to run competitions and that paragraph 96.1 was an obligation imposed on the SFL to present the medals to each of the First, Second and Third Division points winners. He lastly submitted that the Annual Membership fees of the clubs to be members of the League was a direct link to the awards and should be taken as a determinating factor in allowing output tax not to be accounted for by the SFL.

Decision

The appeal is refused.

Reasons

9. The questions for the Tribunal were:

1. Is the award of the medals a supply by way of a business gift in terms of VATA 1994?

2. Is output tax due on the disposal by SFL of the medals to the appropriate member clubs?

3. Is input tax recovery blocked correctly by HMRC when output tax has not been collected?

The Tribunal has answered all three in the affirmative. In looking at the first question the Tribunal considered that the provision of the Constitution with regard to the requirement to present medals to each of the Championship Clubs of the First, Second and Third Divisions does not displace the description of business gift contained in Schedule 4. In Public Notice 700, paragraph 8.9.1 the Tribunal finds that just as a gift is considered as an article where the donor is not obliged to give it, it also goes on to say "and the recipient is not obliged to do or give anything in return". The Championship Clubs have had to carry out their functions and players carry out their employment to the best of their ability and indeed need to merit the awards. So that description of a gift is not relevant. The Tribunal prefers the OED "transfer of property in a thing, voluntarily and without any valuable consideration". Voluntarily is acceptable since the SFL is a membership organisation whose members associate voluntarily in achieving the objectives and carrying out the terms of the Constitution. A person can undertake to make a gift. That occurs in many donations to organisations in all different sorts of ways where undertakings are given to donate over say a period of years. That does not alter the status of the gift.

10. It also leads satisfactorily to the answer to the second question which is contained in Schedule 4 definition. That states that the award of a trophy (which is to be kept by the winner) is a business gift and if over the value of £50, attracts a liability to output tax. Liability is borne by the donor since each divisional Champion Club is not issued with a tax invoice for the goods.

11. Since the set off provisions have been fully described, the Tribunal was satisfied input tax recovery was correctly denied.

12. The answer to the third question therefore is that since output tax has not been paid on the medals by the deemed consumer input tax recovery is not available to the SFL. For all of these reasons SFL's appeal is refused.

Expenses

13. Neither party is entitled to expenses in a standard case.

14. 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.

TRIBUNAL JUDGE

RELEASE DATE: 2 May 2012