[2013] UKFTT 054 (TC)

TC02474

Appeal number: TC/2012/03391

INPUT TAX - refusal of claim for credit - no evidence of supply either to or by Appellant – sale of goods to a non-EU customer - also, refusal of input tax paid on purchase of motor vehicle - no evidence that vehicle was a qualifying car used for business purposes - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MYACCOUNTS.COM LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL
SUSAN STOTT FCA CTA

Sitting in public at Bradford Phoenix House Rushton Avenue Bradford on 4 October 2012

Mr. Sumaila Musah, director of the Appellant Company

Mr. Bernard Haley, Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal against a decision by HMRC to refuse to give credit for input tax in the sum of £12,500, comprising £11,600 tax relating to an industrial freezer installed in Malawi, and £900 tax relating to the purchase of an Audi A3 car.

2. The decision was communicated to the Appellant by HMRC in their letter dated 25 January 2012. The Appellant did not request a review of the decision and appealed to the Tribunal on 20 February 2012. The Notice of Appeal did not contain any stated grounds of appeal.

Background

3. The Appellant registered for VAT with effect from 10 August 2011. The principal business activity was given as ‘accountancy services’. The Appellant operates from a dwelling at 45 Eaglesfield Drive Bradford BD6 2 PY.

4. The Appellant submitted its first VAT return, for the period 10 August 2011 to 31 October 2011, which showed a repayment due of £12,518.32. Prior to the repayment being made the return was selected by HMRC for verification. Following examination of the Appellant's business records HMRC decided that:

A. The claim for input tax in respect of the industrial freezer should be refused because:

1) The Appellant had not provided sufficient evidence to show that a supply had taken place, and

2) because the installation of the freezer was in Malawi and outside the UK, any supply would, in any event, be outside the scope of UK VAT

B. The claim for input tax in respect of the Audi car should be refused because:

1) the vehicle was available for private use

2) no evidence had been provided to show that the vehicle was not subject to an input tax block when it had come into the ownership of the previous owner from whom the Appellant had purchased the vehicle.

5. The Appellant claimed £11,600 input tax in its first return, referenced 10/11, relating to an industrial freezer shipped to Malawi. The documentation supplied by the Appellant to substantiate its claim for repayment of input tax is an invoice dated 10 August 2011 from Jaw Industrial Services Ltd [JIS]. The invoice is worded "cost of midget spiral freezer installation"… “net amount. £58,000”. The Appellant claimed in correspondence with HMRC, that it acted as principal in the supply of the freezer to the Malawi customer ‘Bonzali IHS’, and that it had purchased the freezer from JIS. No documentation either in the form of a contract or other form of evidence was provided by the Appellant to show either that the goods or their installation were supplied to or by the Appellant, or that any such supply was used for the purpose of the Appellants business.

6. The Appellant also claimed £900 input tax on a car purchased from JIS on 19 July 2011 for £4500 plus VAT of £900. When the vehicle was purchased, it bore a personalised number plate T88JAW and on the invoice it stated "Reg plate to be returned to Andy." The proprietor of JIS was Mr. Andrew Wilkinson and HMRC concluded that Mr. Wilkinson had previously owned or

been the registered keeper of the vehicle. No evidence was provided by the Appellant to show that the vehicle was not subject to an input tax block whilst under the ownership of JIS. The company according to its website specialised in industrial spiral freezers, conveyors, food machinery, industrial second-hand food machinery and other items of industrial equipment. HMRC accordingly concluded that the vehicle would not have qualified under 'relevant purpose' and if the director Mr. Wilkinson drove the vehicle, HMRC said that it was reasonable to assume that the vehicle would have been used for both private and business purposes. Accordingly, HMRC say that the Appellant should not have been charged VAT on its purchase. If the vehicle was shown to be a qualifying car, HMRC say that the Appellant would still only be able to reclaim the input tax incurred if it could provide evidence that the car was used solely for business purposes.

The legislation

7. In respect of the freezer there was no dispute between the parties with regard to the legal principles relating to the deductibility or otherwise of input tax. In general it was common ground that a taxable person can reclaim the input tax relating to a supply providing the supply is evidenced by a tax invoice and the goods or services involved are for the use in the person's business. It was also common ground that a business can only recover input tax suffered on supplies actually received by the business and therefore if a supply is made to a third-party no recovery can be made. It was agreed that exports of goods from the UK to non-EU countries are taxable supplies but are zero-rated.

8. The legislation in relevant part, relating to the place of supply of services is contained in section 7A

VAT 1994; section 7A (2) provides:

'a supply of services is be treated as made-

a) in a case in which the person to whom the services are supplied is a relevant business person, the country in which the recipient belongs, and

b) otherwise in the country in which the supply belongs.

9. With regard to the claim for recovery of input tax paid on the motorcar, there was no dispute that generally, input tax is not reclaimable on the purchase of a motorcar. Input tax incurred on the acquisition cost of motor vehicles is blocked. However, input tax is not blocked were the car is a 'qualifying car', that is one which is acquired:

a. by a car dealer as part of stock in trade; or
b. for the purpose of a taxi business, car rental business or driving school; or
c. wholly for business use.

A 'qualifying car' is one which has never been purchased by a non-taxable person, or where the input tax has never been blocked for a taxable person. If the input tax on the purchase of a car cannot be reclaimed, a subsequent sale of the car must be treated as an exempt supply. The Appellant claimed that the vehicle was a qualifying car and had been acquired wholly for business use.

10. The legislation in relevant part is contained in Statutory Instrument 1992/3222 VAT (Input Tax) Order 1992, which states:

‘7(1) Subject to paragraph (2) to (2H) below, tax charged on-

a) the supply (including a letting on hire) to a taxable person;
b) …
c) …
of a motorcar shall be excluded from any credit under section 25 of the Act.

‘7(2G) a taxable person shall not be taken to intend to use a motorcar exclusively for the purposes of a business carried on by him if he intends to-

a)…
b) make it available (otherwise than by letting it on hire) to any person (including, when the taxable person is an individual, himself, or where the taxable person is a partnership, a partner) the private use, whether or not for a consideration.

Evidence and submissions

11. HMRC’s bundle of documents included copies of correspondence between the parties, the Appellant’s VAT return for the relevant period, invoices submitted by the Appellant and a copy of a report by the VAT auditing officer, Mr. Gerard Marescaux who made the decision. Mr. Marescaux also gave oral evidence to the Tribunal. The Appellant provided relevant documentation in respect of the motorcar, including the policy of insurance.

HMRC’s submissions

12. HMRC say that the invoice from JIS dated 10 August 2011 relates to the service of installing the freezer not for its actual supply. The invoice refers to ‘your client IHS’. No documentary evidence has been produced by the Appellant to evidence a transfer of ownership of the goods from JI's to the Appellant or indeed by the Appellant to the customer in Malawi. HMRC say that there was no taxable supply from JIS to the Appellant and that from information supplied by the Appellant he only acted as an agent for the customer.

13. The Appellant has provided a copy of the bill of lading, but this states the consignor to be JIS of Unit 13 Victoria Industrial Estate, and the consignee to be HIS Bakery PO Box 539. Lilongwe Malawi. The Bill of lading refers to 2 pallets of parts for a machine. A bill of lading serves as proof of ownership of cargo and can be used for the resolution of disputes relating to its title or damage to the goods. However the Appellant’s name is not mentioned on the Bill of lading. HMRC say the documentation provided did not constitute proof that the goods had actually left the UK. The documentation supplied by the Appellant did not enable HMRC to verify the supply and export of the goods. HMRC therefore requested the full name and address of the company used to export/ship the materials, evidence of the name of the supplier or consignor where different from the supplier, the customer, the goods, and an accurate value, the export destination and the mode of transport and route of the export movement. A further copy Bill of lading dated 23rd February 2012 was produced by the Appellant as evidence of his purchase from JI S but refers to ‘1 package of electrical appliance’ shipped in one container and again makes no reference to the industrial freezer or the Appellant. Furthermore JIS had been wound up in September 2011. Other documentation produced by the Appellant, purportedly in support of his

supply to the customer referred to tractors and equipment, which had no relation or connection to the supply in question.

14. HMRC say that there has been no taxable supply because the Appellant did not take title to the goods. Furthermore VAT should not have been charged by the supplier. Copy e-mails to the Appellant from JIS all appear to show that money for the freezer and its installation were paid to JIS. The Appellant has not produced any evidence to show that he purchased goods from JIS and received payment for their resale/installation from the Malawi customer.

15. Mr. Marescaux says that the Appellant told him during the audit process that he had initially acted as an agent of JIS but that when JIS is got into financial difficulties, the customer in Malawi would only deal with him as principal. However, there was no evidence to show that the Appellant had acted as a principal in the acquisition and resale/installation of the goods. The Appellant had not provided any evidence to show he had capital to purchase the goods, which appeared to have been paid for in instalments by the customer. Mr. Marescaux said that the Appellant had told him that he had previously worked for JIS through an agency completing VAT returns, following which the Appellant began acting as an agent for JIS. Two deals were concluded where he had introduced customers in Belgium and the Netherlands to JIS who then dealt direct. In each of these transactions the Appellant received commission from JIS for the introduction.

16. Mr. Marescaux said that the Appellant told him that he negotiated the transaction with the customer in Malawi on the basis that he would receive a 20% 'markup.' Mr. Marescaux said that the Appellant appeared to be under the mistaken impression that in such circumstances, he would be acting as a principal and did not understand that the markup represented commission, which followed the liability of the main supply, which was zero-rated. JIS were providing a supply and fit in Malawi which is outside the UK and therefore outside the scope of UK VAT.

17. Mr. Marescaux said that the basic agreement as explained by the Appellant, was that he would make third-party payments to JIS or its suppliers for materials and freight forwarding costs. The deal was that the Appellant would pay JIS or Mr. Wilkinson 35% of the invoice with the balance paid on completion of installation. Mr. Marescaux said his enquiries revealed that the insolvency practitioners who dealt with the winding up of JI S were unaware of the transaction and there was no evidence of output tax having been declared.

18. With regard to the motor vehicle, Mr. Marescaux said the car had been observed parked outside the Appellant's home. He said it was clear from the history of the vehicle and the Appellant's policy of motor insurance, which was in the name of Mr. Musah and for private use only, that the vehicle was not being used wholly and exclusively for business purposes. In fact it appeared that the Appellant was not covered for business use. The policy specifically excluded any use for commercial travelling. The policy was for use of the vehicle for social domestic and pleasure purposes, including travel between the driver's home and permanent place of work.

The Appellants submissions

19. Mr. Sumaila Musah director of the Appellant company reiterated the grounds of appeal set out in correspondence with HMRC , which were as follows:

i. "the motor insurance policy document includes a clause for business use. It states "use for …….travel between the driver's home and permanent place of work.

ii. It was made clear to the insurer that cover was required for business use only. They advised that they did not have a policy for business use only and that the cheapest alternative was for me to take what I have. Had there been such a policy with my insurer, I would have gone for that. (call records to my insurer can prove that)

iii. It is not true that the vehicle is parked at a domestic address. The vehicle is registered at my registered business address, were it is parked 24/7

iv. It is not true that the vehicle is available for private use because I have my family car, which I use for my private purposes.

v. The records I have of my mileage since purchase of the vehicle prove that it is strictly for business use.

vi. Using our commonsense also when I didn't have my business, I didn't have the car which again proves that it is exclusively for business use."

20. Regarding the industrial freezer the Appellant says in his correspondence with HMRC:

i. "I have a bill of lading which proves the item was sent abroad. Even on the day the shipment was about to leave my premises, I asked HMRC to take photographic evidence. They declined.

ii. The transaction was between my business and JIS. We are all registered business in the UK with a VAT registration number and HMRC should know it is illegal for a registered business to issue an invoice to another registered business without charging VAT. JIS sold me the product so it should not matter where I am sending the product. HMRC are confused, assuming I acted as agent but I did not. I bought the product from JIS to trade with hence; who I eventually sold it is not necessary at the time I am buying it".

21. At the hearing Mr. Musah said that he lived at 5 Cousin Avenue Bradford and that he had lived there with his family since 2005. He said that 45 Englefield Drive is his business address. This was the reason the vehicle was observed parked outside that property. Mr. Musah maintained that his motor insurance policy covered business purposes. He was not able to provide any information regarding the previous use of the car and whether or not the vehicle was a qualifying car. He maintained that his mileage records would show that his use of the vehicle was purely for business purposes. Mr. Musah accepted that his business mileage records appeared to indicate that he was using the vehicle while uninsured.

22. With regard to the industrial freezer, Mr. Musah said that he originally arranged for JIS to supply and install the freezer on behalf of the customer in May 2011, but there were delays and difficulties regarding payment, and in the meantime JIS got into financial difficulties. The customer therefore preferred to deal 'direct' with the Appellant rather than JIS, and that was how the transaction was negotiated and concluded.. He said that the freezer has not yet been finally installed. The customer had paid him £40,000 but he did not want the rest of the money for the goods until it had been installed. The difficulty was that JIS was in liquidation and there was no clear way of concluding arrangements for the installation of the freezer.

Conclusion

23. At the end of the hearing the Tribunal reserved its decision which now follows.

24. A supply of goods is deemed to occur when the ownership of goods passes from one person to another. If a taxable person makes a taxable supply to another taxable person, a ‘tax invoice’ must be issued. The purpose of the invoice is to provide documentary evidence of the transaction, so allowing the person receiving the supply to reclaim the input tax related to that supply. The Vat invoice has not been receipted and JIS did not declare output tax on the ‘transaction’. No evidence, in the form of bank statements, contractual documentation or otherwise has been provided by the Appellant to show that ownership of the goods passed to him.

25. The Tribunal finds that the Appellant has not provided sufficient evidence to prove that a supply of the industrial freezer took place. Even if it is accepted that the supply took place, the Appellant’s supplier should not have charged VAT. The installation of the freezer was in Malawi and as such, the place of supply was outside the UK and therefore outside the scope of UK VAT. There is also no evidence that VAT was paid to the supplier. The £11,600 ‘input tax’ which the Appellant says paid on the purchase of the industrial freezer cannot be recovered and the Appellants appeal in this regard is dismissed.

26. The Tribunal finds that the Appellant has not provided sufficient evidence to show that the Audi A3 vehicle was a qualifying car and was not available for private use. The supplier should not have charged VAT. Accordingly, the Appellant’s claim for £900 ‘input tax’ paid on the purchase of the vehicle, was correctly refused by HMRC and the Appellant’s appeal in this regard is also dismissed.

27. 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 S CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 11 January 2013