[2015] UKFTT 0456 (TC)

# TC04618

**Appeal number: TC/2012/00633**

**VAT** –*whether quantities of coal said to have been delivered from Northern Ireland to the Republic of Ireland were in fact so delivered and thus qualified for zero-rating; Public Notice 725 requirements for zero-rating of VAT.*

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**MFS FUEL SUPPLIES LIMITED** **Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHRISTOPHER HACKING**
**CELINE CORRIGAN**

**Sitting in Belfast on 4 June 2014 and 28 July 2015**

**Danny McNamee, Solicitor appeared on behalf of the Appellant**

**Mrs Sharon Spence, a presenting officer on behalf of HMRC appeared for the Respondents**

## DECISION

*The appeal*

1. This was an appeal against a decision of the Commissioners to issue an assessment for Value Added Tax (VAT) in the sum of £187,178 plus interest representing under-declarations of VAT on supplies which had been incorrectly claimed by the Appellant as zero-rated in the quarters 12/07 to 12/09 and in the months 01/10 to 05/10 and 07/10 to 11/10. The assessment was notified by way of a Notice of Amendment of Assessment dated 10 December 2012.

2. Also under appeal was an adjustment made under the provisions of section 25(3) of the Value Added Tax Act 1994 (VATA) to the Appellant's return for the quarterly period ending 12/10 in respect of under-declared VAT on supplies which it is said by the Respondents had been wrongly declared as zero-rated. The effect of the adjustment was to reduce by £35,440 a net repayment of £101,437.36 to £65,997.36. This adjustment was notified to the Appellant by letter dated 27 November 2012.

3. The total amount at issue between the parties in this appeal is therefore £222,618.

*Background to the appeal*

4. The Appellant's business is that of a distributor of oil and coal. The Appellant trades from premises located in Armagh, Northern Ireland. It purchases coal in bulk which is delivered to it by Hayes Fuels and a company known as LCC. The coal is then bagged by the Appellant and sent out to its wholesale customers on pallets. It does also undertake some domestic sales but these are not relevant to the matters which the tribunal must decide. The Appellant uses contracted transport for its deliveries although a number of customers will collect supplies from the Appellants' yard using their own transport or transport which they have arranged.

5. The appeal concerns sales of coal which the Appellant says were made to customers in the Republic of Ireland (ROI) which, consequently, were properly to be treated as zero-rated for VAT purposes.

6. The Respondents say two things.

7. First they say that there is no adequate proof that the coal said by the Appellant to have been supplied to its customers in the ROI was in fact so supplied. The Respondents suggest that it would have been greatly to the financial advantage of the Appellant to have pretended to have supplied customers in the ROI when in fact it had sold the coal to customers in Northern Ireland from which it would collect but not account for VAT,

8. Secondly the Respondents say that the information contained in the Appellants invoices to the ROI customers does not meet the required standards set out in the Respondents' Public Notice 725, a notice which has the force of law. On this account those invoices may not be allowed for VAT purposes.

9. It was accepted by both Mr McNamee and Mrs Spence that the primary issue of substance with which the tribunal was required to address was the question of whether or not as a matter of fact the sales claimed by the Appellant were made as it alleges to customers in the ROI.

10. Mrs Spence made no concession, however, concerning the position taken by the Respondents in relation to the content of the invoices and this too is therefore a matter which the tribunal must address in this decision.

*The proceedings before the tribunal*

11. The appeal was heard over two days in June 2014 and July 2015.

12. The Respondents' evidence was given by Denis Brown, an Officer of the Respondents employed at Custom House Belfast. Mr Brown had provided a signed witness statement which, in its amended form, exhibited copy invoices and other documents in support of the Respondents' contentions. Mr Brown was present on both of the hearing dates and gave oral evidence on which he was cross examined by Mr McNamee. The evidence of Mr Brown was of particular significance as it was he who had made the initial contact with the Appellant concerning the matters addressed by this appeal in the course of what is understood to have been, initially at least, a routine VAT inspection. Mr Brown was personally involved in the enquiries which followed.

13. The Appellant's principal director, Mr Malachy Molloy would in the normal course have been expected to give evidence as to the sales which had been put in issue by the Respondents. However notes had been provided by the Appellant from Dr R M Carlile, Mr Molloy's GP to the effect that the combined effect of alcohol dependence and a decline in his patient's mental faculties would be further exacerbated were he to be required to give evidence to the tribunal.

14. Mr McNamee said that it was proposed that the relevant evidence as to the sales to the ROI could properly be inferred from the documents which had been disclosed and from the evidence which the Appellant's accountant, Mr Gerry Boyle FCA would give to the tribunal.

*Mr Brown's evidence*

14. In his amended witness statement of 29 October 2013 Mr Brown states that he made a series of visits to the Appellant's accountant's office for the purpose of carrying out a VAT inspection. It became clear from what Mr Brown describes as the "partial records" produced to him that substantial supplies of coal had been made to customers in the ROI.

15. In particular Mr Brown noted that the business did not comply fully with the requirements of Public Notice 725 The Single Market, paragraphs 4.3 and 5.2 both of which have the force of law and which would have to be correctly completed to support a claim to zero-rating.

16. Mr Brown also notes that the documentary evidence produced to him did not show the mode of transport, the route the movement of the goods took or an EC destination or address as required by the Public Notice.

17. Over the course of several further visits and meetings Mr Brown states that he attempted to follow up the audit trail for the Appellant's sales to ROI customers without success. Enquiries concerning a haulier advised by Mr Boyle to have undertaken deliveries to the ROI customers revealed that the vehicle used was not registered to the haulier who effected the deliveries but to another person in Armagh.

18. Mr Brown stated to the tribunal that he also had difficulties in tracing the flows of funds representing the price paid for the coal by the Appellant's customers in the ROI. The difficulties arose because it appeared to have been the Appellant's practice to invoice its ROI customers in £sterling but to receive payment in cash in €euros. These payments would frequently be made, at the Appellant's request, direct to the Appellant's supplier in settlement or part settlement of the Appellant's account with the supplier.

19. It was Mr Brown's evidence to the tribunal that this method of accounting caused considerable confusion so that he had been unable to establish a clear audit trail for any of the transactions referred to below.

20. Mr Brown had continuing concerns as to the truth of what he was being told about the deliveries of coal to certain ROI customers. In particular he refers in his witness statement to the evidence obtained from enquiries made of the authorities in the ROI as follows:

> **"Mulligan Fuels** IE 3612622A – Irish Revenue officials visited the address provided by the Appellant at Tateetra, Newtownbalregan, Dundalk, on 3 occasions, but were unable to locate the customer at this address. The Appellant's EC sales declarations show £687,108 worth of coal supplied to Mulligan at an unknown address during the period 1/10/07 – 30/11/10.
>
> **Hugh Bennet** IE 4263195W – Irish Revenue officials found that customer's brother resided at the address provided by the Appellant. Hugh Bennett previously ran a haulage business from the premises but has not been there for a year. Officials were able to contact Hugh Bennet who confirmed he resided at Maphona Road, Mullaghbawn, Newry (UK), he confirmed he was in the haulage business and never bought coal from Appellant. The Appellant's E sales declarations show £327,325 worth of coal supplied to Bennett during the period 1/1/09 – 30/11/10.
>
> **Kilmore Fuels** IE 5051595Q – Irish Officials confirmed that this VAT number actually belonged to 'G Mc' of Labourers Cottages, Co Dublin. 'G Mc' did not receive any coal from MFS Fuels quarter 4 2009 and quarter 1 2010. The last coal 'G Mc' purchased from MFS Fuels was December 2008. Appellant's EC sales declarations show £356.867 worth of coal supplied to Kilmore during period 1/01/09 – 30/11/10.
>
> **KC Fuels** have been deregistered since June 2007. Appellant's EC declarations show £68,049 worth of coal supplied to KC Fuels during period 1/10/09 – 30/11/10**"**

21. In relation to each of the above notes Mr Brown produced documentary evidence with the relevant page numbers in the agreed documents bundle appropriately referenced. [These references been omitted from the above summaries.]

22. On the basis of the information before him Mr Brown disallowed zero-rating for the supplies to these customers and deemed the supplies to be domestic (UK) in nature and thus liable to VAT at the standard rate

23. On 19 July 2011 an assessment was issued by Mr Brown in the sum of £283,029 which, following a review was reduced to £187,178. A Notice of Assessment was issued in this amended sum on 10 December 2012. On 27 November 2012 a further letter notifying the adjustments made to the Appellant's VAT return for the period 12/10 was sent to the Appellant.

24. Mr Brown was cross examined at some length on his evidence and on the more recent evidence which had been produced by first the Respondents and then in reply by the Appellant. This is dealt with more particularly below in the tribunal's consideration of the appeal.

*Mr Boyle's evidence*

25. Despite the directions given by the tribunal concerning the hearing of this appeal, there had been no written statement of the evidence to be given by Mr Boyle. No explanation was given by Mr McNamee concerning this failure save that he had apparently been on holiday for some time. Mr Boyle was however present and in the interests of justice and, having regard in particular to the indisposition of Mr Molloy, Mr Boyle's testimony was taken.

26. Mr Boyle told the tribunal that he was a Chartered Accountant (FCA) with some 20 years experience having worked in London. New York and Northern Ireland. He was familiar with cross border business including business transacted between the North of Ireland and the South. This experience included dealing with situations in which payments might be made in one currency and sales records maintained in another currency. He had particular experience in forensic accounting.

27. It was the core of Mr Boyle's evidence that contrary to the impression given by Mr Brown the accounts maintained by the Appellant were complete and were quite capable of evidencing the invoicing and subsequent payment of the transactions with the 4 customers referred to at paragraph 20 above as well as all other of the Appellant's customers.

28. Mr Brown had in his evidence stated that he had not been able to match up cash book entries for sales to particular invoices. Mr Boyle pointed to 2 specific entries in the cash book by way of example and showed how these related to 2 of the invoices in the bundles of invoices produced by the Appellant. One of these examples was within the time period covered by Mr Brown's enquiries.

29. It was Mr Boyle's evidence that during the meetings he had with Mr Brown he took Mr Brown step by step through the accounts showing him precisely the records for the disputed transactions.

30. Asked by the tribunal how he accounted for the payments made by customers direct to the suppliers to the Appellant, Mr Brown said that these were quite simply dealt with by showing a receipt of funds by the Appellant and a corresponding payment to the supplier.

31. It was accepted by Mr Boyle that for a long time prior to the recent enquiry the Appellant's invoicing had not complied with the full requirements of the Public Notice 725. However that fact would have been quite apparent said Mr Boyle on the occasion of previous VAT inspections some at least of which had been conducted by Mr Brown. No objection had then been raised. However since the enquiry commenced the Appellant had changed its practice so as now to include the required additional information. In particular during Mr Brown's visits he was provided for each of the disputed 4 transactions with details of the customers and the delivery addresses concerned which he believed to be sufficient to satisfy the Respondents reasonable requirements for the content of the VAT invoices.

*Further evidence*

32. Because the Respondents had not in fact expressed themselves satisfied with the information provided by the Appellant as to the sales in question a more formal application to admit a witness statements by an officer of the Respondents as to the enquiries made under the VAT Information System (VIES). The information obtained expanded on the brief responses referred to at paragraph 20 above and strongly suggested that the transactions were shams.

33. With a view to dealing with this evidence, to the admission of which Mr McNamee objected Mr McNamee produced further evidence including reports from an enquiry agent and at the hearing examples of the Appellant's multipart invoices and a copy of a local authority document apparently signed by Mr Gerard McLeod, a principal of the Appellant's customer Kilmore Fuels. The substance of the document was not material to this appeal. What was of interest was the fact that Mr McLeod's signature on this document was inconsistent with his signature on other documents related to his dealings with the Appellant. This aspect of the appeal will be dealt with more fully in the tribunal's consideration of the appeal.

34. As the appeal hearing commenced the position was that there were applications by both parties to exclude the further evidence each had obtained. The tribunal allowed both applications indicating that it wished to have before it all of the evidence considered by the parties to be relevant to the appeal.

*The tribunal's consideration of the appeal*

35. The scope of this appeal had been narrowed considerably following a review by the Respondents under the formal provisions for the review of decisions. Practically what this meant was that there were now only 4 transactions at issue – the 4 mentioned at paragraph 20 above. Because the evidence relating to these transactions emerged during the course of the hearing rather than having been clearly defined at an earlier stage it is convenient to deal with each transaction separately.

36. **Mulligan Fuels** – In addition to the response to its enquiry referred to at paragraph 20 above the further enquiries of the Revenue Authorities in the ROI under the provisions of the Administrative Cooperation EU Regulation 904/2010 revealed that Eamon Mulligan had denied receiving any coal supplies from MFS and/or Malachy Molloy during the period from October 2010 to February 2011. He had told the officer that he had ceased to trade in coal during the Summer of 2010 and had become bankrupt during that time. Mr Mulligan also

produced to the officer a letter from Malachy Molloy addressed "To whom it may concern" to which was attached a letter which Mr Mulligan was asked to sign and return.

37. The letter bore Mr Molloy's address and was dated 26th February 2013. It read as follows:

> "Dear Sir,
>
> We have a problem with VAT authorities in Northern Ireland. They have been holding a large sum of money from us over the past few years. I require the letter enclosed to be signed by yourself and in doing so will be mutually beneficial to both parties concerned.
>
> Please call me to arrange a meeting, either in a Hotel of your choice or any venue that is agreeable to you. Or if you prefer to send a third party to meet me with the signed letter, I would be agreeable to this.
>
> I look forward to hearing from you.
>
> Kind Regards,
>
> Malachy Molloy" (signed)

38. The attached letter read as follows:

> "To Whom it may Concern:
>
> I, Eamon Mulligan, confirm I received the list of goods on the attached sheet, from October 2010 until February 2011.
>
> Yours faithfully,
>
> Eamon Mulligan" (not signed)

39. It is understood from the report of the ROI officers that attached to the letter which Mr Mulligan was being asked to sign was a schedule detailing coal supplies throughout the stated period totalling 442,949.34 under a € sign. Mr Mulligan states that the transactions did not take place

40. On the basis of this evidence say the Respondents the invoices to Mulligan Fuels are properly disallowed for zero rating.

41. The Appellant caused enquiries to be made by an investigator whose report was produced. This stated that from observations made, Eamon Mulligan and his wife appeared to be concerned in a business trading under the name "Mulligan Fuels" from their property at Tateetre, Newtownbalreagan, Dundalk. This report concludes:

> "The subject is clearly proven to be working as a coal/oil/gas stockist, he was seen getting into many different vehicles in the yard and it is clear by his orders of the

other males that he is in charge of them. His business name is on these vehicles and he is seen standing next to them and they are filled with fuels"

42. The report is supported by colour photographs depicting activity at Mr Mulligan's yard. The report itself is dated 30th April 2013. The observations appear to have been made on 12th April 2013.

43. A more recent cross border enquiry by the Respondents resulted in a visit by Revenue Officers from the ROI to Mr Thomas Mulligan, Eamon Mulligan's brother. He stated that the last time coal was delivered by the Appellant to their business was in 2008. Both he and his brother now traded separately in both coal and home heating oil. Since 2008 Mr Thomas Mulligan stated that he had bought all his supplies of coal and briquettes from Capper Fuels and Kelly Oils. Not from the Appellant. Mr Mulligan said that he had become aware of the fact that the Appellant had used his brother's (Eamon's) VAT registration number.

44. It was Thomas Mulligan's evidence that following the initial cross border enquiries he had got in touch with the UK trader (the Appellant) and had been assured that it had been a clerical error by the Appellant which they would rectify.

43. **Kilmore Fuels** – the position here was barely less confusing than in the case of Mulligan Fuels. The business, Kilmore Fuels, was run by one Gerard McLeod from an address at Labourers Cottages, Clonshaugh, Cloggham Co Dublin. When contacted by the Revenue Officers in the ROI, Mr McLeod denied having received any coal from the Appellant after 2008 until January 2013. Doubt was expressed by the officer reporting on his visit as to the signature which appeared on a statement indicating that he had received 10 purchases of coal from the Appellant in December 2010 was not his.

44. The VAT number used for the sales to Kilmore Fuels related to a former business carried on by Mr McLeod's father who had died some time ago. The premises from which the business was conducted had been sold in 2005 according to the information provided to the Respondents by the authorities in the ROI.

45. The customer **Hugh Bennett** traded with a valid VAT number but denied having received goods from the Appellant. The report from the authorities in the ROI reads as follows:

> "Address at Winnings Naul, Co Dublin is a farm and large storage yard on which John Bennett lives in a prefabricated building.
>
> On my visit he claimed that his brother Hugh Bennett used to run a haulage business there but had not been around for about a year. He gave us a contact number in Northern Ireland for Hugh Bennett. I phoned him on [redacted]. His address is [redacted] Road Mullaghbawn Newry. He stated that he was in the haulage business only and did work for [redacted] in Dublin and Belfast and had never bought coal from MFS or anyone else.
>
> He said he had not done much business during the past year and his purchases where (sic) only parts for his trucks which have IE registrations. His agent has confirmed that there are no invoices or payments to MFS on his records."

46. The evidence of the Respondents is that at the times of the alleged sales to this customer **KC Fuels** had been de-registered for VAT No further or more detailed evidence appears to have been obtained with respect to this business.

*The law*

47. The law in relation to the matters which the tribunal are required to consider is for the most part quite straightforward.
48. Section 4 of VATA provides for the charging of VAT in respect of taxable supplies (not being exempt supplies) to a taxable person in the UK in the course or furtherance of a business carried on by such a person.

49. Section 30(8) of VATA states:

*(8) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulation, 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 regulation or the Commissioners may impose are fulfilled.*

50. Section 30 (10) provides:

*(10) Where the supply of any goods has been zero-rated by virtue of…….……regulations made under subsection 8.……above and –*

*a) the goods are found in the United Kingdom after the date on which they were alleged to have been or were to be exported or shipped or otherwise removed from the United Kingdom; or*

*b) any condition specified in the relevant regulations under……..…subsection 8 above or imposed by the Commissioners is not complied with,*

*and the presence of the goods in the United Kingdom after that date or the non-observance of the condition has not been authorised for the purposes of this subsection by the Commissioners, the goods shall be liable to forfeiture under the Management Act and the VAT that would have been chargeable on the supply but for the zero-rating shall become payable forthwith by the person to whom the goods were supplied or by any person in whose*

*possession the goods are found in the United Kingdom; but the Commissioners may, if they think fit, waive payment of the whole or part of that VAT.*

51. The relevant regulations to which reference is made in the foregoing provision is Regulation 134 of the VAT Regulations 1995 which provides that:

*(134) Where the Commissioners are satisfied that –*

*…….…..*

*c) a supply of goods by a taxable person involves their removal from the United Kingdom,*

*d) the supply is to a person taxable in another member State,*

*e) the goods have been removed to another member State, and*

*f) the goods are not goods in relation to whose supply the taxable person has opted, pursuant to section 50 (a) of the Act for VAT to be charged by reference to the profit margin on the supply*

*the supply, subject to such conditions as they impose, shall be zero-rated*

52. Public Notice 725 constitutes the tertiary legislation which provides that a taxpayer may zero-rate a supply of goods to VAT registered customers in another member State of the EC provided all of the stipulated conditions are met.

53. Those conditions which have thus the force of law are stipulated as follows –

*A supply from the UK to a customer in another EC Member State is liable to the zero rate where:*

*xi you obtain and show on your VAT sales invoice your customers EC VAT registration number, including the 2-letter country prefix code, and*

*xii the goods are sent or transported out of the UK to a destination in another EC Member State, and*

*xiii you obtain and keep valid commercial evidence that the goods have been removed from the UK within the time limits set out at paragraph 4.4*

No point has been taken or would appear to arise in this appeal with respect to the time limits. More relevantly however paragraph 4.6 of the Notice 725 directs the taxpayers that, in the event they are not able to meet all of the above conditions, they must account for VAT at the correct rate for the same supply of goods in the UK.

*The tribunal's consideration of the appeal*

54. This was an appeal in which there were considerable conflicts of evidence made the more difficult to resolve by reason of the unreliability of many of the sources of the evidence produced.

55. Put simply, Mr Molloy on behalf of the Appellant and through his accountant and solicitor contends that in relation to the deliveries to each of the 4 customers the subject of the appeal the goods were sold and delivered to those customers in the Republic of Ireland and that this can be verified by the books of account maintained by the Appellant and the supporting primary documents.

56. As if to place the matter beyond doubt Mr Molloy had each customer sign a statement acknowledging that it had duly received the deliveries. The fact that, contrary to the impression conveyed by the reports received by the Respondents from the Revenue Officers in the ROI, there were in fact genuine customers in business to which deliveries were made is demonstrated by the evidence of the Appellant's enquiry agent and the photographs taken by her.

57. The Appellant accepts that there has been a degree of confusion in light of the contrary statements made by customers to the effect that they had not purchased coal from the Appellant as stated. That stance was explained by Mr McNamee as consistent with a desire on the part of those customers to deny that they had been involved in trading suspected not to have been declared to the Revenue authorities in the ROI.

58. In approaching the task of seeking to extract from the evidence some understanding of what has in fact taken place with respect to the sales and deliveries of coal said to have been contracted the tribunal has looked at both the evidence of the audit trail and the conflicting evidence when comparing what the Appellant says and what his customers appear to be saying.

*The audit trail*

59. The Respondents evidence was that of Officer Brown. He told us that the evidence of a clear paper trail following a sale, delivery and payment was "confusing". He said that he had asked for but had not been shown any delivery notes. He had been unable, he said, to relate specific invoices to the cash book and thence to the ledger. He had also been unable to relate payments which were more often than not in cash and in €euros to specific sales.

60. As indicated above this evidence was in conflict with that of Mr Boyle who told the tribunal that he had "walked Officer Boyle" through the paperwork and to the ledger accounts maintained on the SAGE computer accounting system.

61. In cross examination examples of entries showing particular invoices as recorded in the cash book were demonstrated by Mr Boyle who refuted entirely Officer Brown's evidence of confusion.

62. Officer Brown appeared also not to have realised that the Appellants multi-part sales invoices included as a copy a delivery note which however was not always signed by or on behalf of the customer. Happily perhaps for the Appellant an invoice put in evidence at a late stage to demonstrate problems with the way in which Gerard McLeod's signature appeared to

change from one document to another was shown actually to have been signed by either Gerard McLeod or someone signing his name.

63. The tribunal preferred the evidence given by Mr Boyle who had a close knowledge of the Appellant, his business and his accounts and who confidently asserted that the accounts were perfectly capable of reflecting the business claimed by the Appellant to have been transacted with the 4 customers in question.

64. Mr Brown was not a confident witness. He struck the tribunal as one who had formed a view about the way in which he believed the Appellant conducted his business and did not persevere in seeking to trace through the accounts as he might have been expected to. He was unsure in his evidence referring repeatedly to the apparent confusion with which he was faced. This was a confusion which in the view of the tribunal Officer Brown did little to try and resolve.

65. Mr Boyle on the other hand is a Chartered accountant of some experience and standing in his profession. The tribunal would be reluctant to believe that he would compromise his professional standing by giving evidence to it which was other than truthful and which could properly be relied upon.

66. The impression that the books of the Appellant had been maintained to a reasonable standard was consistent with the tribunal's review of the Cash Book and the invoices tendered at the hearing. We have to accept that the appropriate ledger entries were made on the SAGE system but it seems to us that not to have done so is a matter which would be as unhelpful to the Appellant as it would be to the Respondent. It would also contradict the clear evidence given by Mr Boyle which the tribunal has accepted.

67. Officer Brown said that part of his difficulty was that whilst the accounts were denominated in £sterling, payments were frequently made in €euros. The fact that payments were also often in cash and directed to the Appellant's suppliers was a further complicating factor. The tribunal accepts that this would make the task of verification more difficult but not, with some diligence, impossible.

*The evidence concerning the deliveries to the customers*

68. The evidence in this respect is far more challenging.

69. When the claim to zero-rating was first raised as an issue and, in particular the fact of delivery to the customers was challenged, Mr Molloy produced a series of letters dated 14 April 2011 which purported to have been signed in each case by the customer as acknowledging that he had received the goods in question.

70. Such letters followed a substantially common form. They commence with a request which was generally as follows:

"Dear [ ]

Please confirm that you received the following supplies form *(sic)* MFS Fuels Supplies Limited in the month of December 2010 and that you arranged your own transport for these supplies by Joe Martin"

71. There then followed a list of the claimed deliveries by date, invoice number and € value.
The letter then contained an acknowledgment generally stating:

"Yes, I confirm that I have received the above goods and I arranged the transport of these goods"

……..followed by the customer's signature.

72. There were some small variations but letters and acknowledgments in this form were signed by Gerard McLeod, Hugh Bennett, Seamus Casey on behalf of KC Warehouse and Eamon Mulligan. Other deliveries then being questioned by the Respondents were dealt with similarly.

73. If Mr Molloy thought that the use of such a letter was helpful to his cause he was in the tribunal's view wrong.

74. If these letters and in particular the signatures on them are to be taken at face value a number of assumptions must be made. Either the letters were despatched by post or the signatories attended at the Appellants address to sign them. It is of course possible that Mr Molloy went around to each customer to secure his signature.

75. In the case of Hugh Bennett it is unlikely that the signature is genuine because not only did Mr Bennett say that he did not sign but it is also clear that he did not conduct the business of a coal merchant in any event. His address is located at Newry in Northern Ireland and not at the supposed delivery address.

76. Similarly doubt has to be cast on the authenticity of the signature of Eamonn Mulligan who stated to the Officer in the ROI that he had not purchased any of the listed goods. It is noted that the signature shows 2 n's in the spelling of the forename in this case although the references to Mr Mulligan more generally show only one n. This may or may not be of significance.

77. What is considered by the tribunal to be of greater significance in this case however is the language of the subsequent letter sent to Mr Mulligan and referred to at paragraph 37 above. This letter was written to Mr Mulligan on 26 February 2013 at a time when if Mr Mulligan had already signed an acknowledgment (on or about 14 April 2011), if indeed he had done so. The way the later letter is written suggests that Mr Molloy is telling Mr Mulligan about something quite new. He makes no reference to Mr Mulligan's earlier acknowledgment of receipt of the goods which seems to us to be surprising. The language is the tribunal suggests more consistent with the fact that the earlier document is not what it appears to be.

78. There are similar questions concerning the authenticity of Gerard McLeod's signature. The Officer from the ROI who investigated this customer expressed his doubts as to the authenticity of Mr McLeod's signature on the April 2010 document. It is also difficult to know how such a signature could have been obtained from Mr McLeod given the fact that the trading address notified by the Respondents on the basis of their investigations as to the deliveries to this customer, had changed. Mr McLeod claims that he had had no deliveries of

coal from the Appellant on the dates specified in the letter/acknowledgment on which the Appellant now seeks to rely.

79. In light of the very considerable doubts raised as to whether the goods were in fact delivered to the customers as claimed by Mr Molloy it would have been helpful to have had some direct evidence from a delivery driver about this matter. What the tribunal was told was that the customers arranged their own transport using the services of one Joe Martin. A check was made on the registration number of the truck said to have been used by Mr Martin but this disclosed the registered owner as being someone else. This is not very helpful one way or the other. Mr Martin may well be using a vehicle owned by someone else or it may be that Mr Martin is as shadowy a figure as Mr Molloy's customers appear to be. In any event Mr Martin could have been a useful witness as to the fact of delivery of the coal but was not called.

80. Mr Molloy, through his solicitor, explains the apparent reluctance of his customers to acknowledge their respective purchases by reference to a suggestion that they are, in effect, all tax cheats who, by failing to admit to their trading with the Appellant, seek to avoid tax in the Republic. No evidence was adduced to substantiate this extraordinary claim which must remain in the realm of speculation.

81. Also speculative however was the Respondents' suggestion that what had happened was that the Appellant had in fact delivered the coal to customers in Northern Ireland so as to take advantage of the considerable demand for coal brought about by the exceptionally cold weather experienced in the Winter of 2010.

82. That speculation has a more realistic underpinning in that the Appellant, whilst it claimed zero-rating for its sales could charge VAT to its customers in the North and pocket this. There would be a considerable financial incentive for the Appellant to act in this way. Furthermore in selecting candidate alternative customers for the putative sales into the ROI the Appellant would be inclined to use "old" customers whose activities might, on paper at least, appear consistent with true sales and which would not be expected to be investigated. Again there is no evidence to support this speculation and it must therefore remain as such.

83. There is also the matter of the very strange letter of 26 February 2013 written by Mr Molloy to Mr Mulligan. There is a strong suggestion in this letter that Mr Mulligan's cooperation in acknowledging the sales would be of mutual benefit. The suggestion of dishonesty in this approach is one which the tribunal does not overlook although we do acknowledge the possibility, as pressed by Mr McNamee, that this was a case of unfortunate phrasing by Mr Molloy who the tribunal is prepared to concede probably knows a great deal more about coal than he does of writing letters which accurately reflect his intentions.

*Public Notice 725*

84. The Respondents rely on the requirements of the notice. Mr McNamee argued that what is important is that if the deliveries are found to have been made, as his client contends, to customers in the Republic of Ireland then, as the necessary information concerning these deliveries was provided promptly when it became apparent that this was an issue, the Respondents should exercise the discretion they have to allow the zero-rating of the supplies.

85. The tribunal believes that had the Respondents' enquiries revealed that the deliveries had been made as claimed this argument would likely have found some favour with the Respondents themselves. The fact is that the enquiries revealed what can only be described as a very dubious situation the truth of which, despite enquiry, could not be discerned.

86. In these circumstances it was, in the tribunal's view, perfectly reasonable for the Respondents to rely on strict adherence to Notice 725. Furthermore the lack of the details required concerning the customers, their correct addresses and relating to the deliveries themselves was not, as Mr McNamee contends made good by the additional information supplied. Some of that information was clearly wrong and other aspects were mired in doubt.

87. In the case of KC there is no realistic suggestion that this small delivery could be zero-rated as the customer's VAT registration had been cancelled.

88. The information originally supplied on the invoices for the remaining customers was not such as satisfied the Notice being no more than a single name of the customer. The information subsequently provided has not been capable of being verified as correct and whether the goods were in fact delivered to the customers in the Republic is still far from clear.

89. Mrs Spence referred the tribunal to two cases from which it was said guidance might be helpful in considering this appeal. The first was that of *Customs and Excise Commissioners v Pegasus Birds Ltd* [2004] EWCA Civ 1015 and the second was the case of *Van Boeckel v Customs and Excise Commissioners* 1981 ST 290. Neither case is of significant assistance as both concerned situations in which there were no VAT returns so that a "best judgment" assessment of the taxpayer's liability had to be undertaken by the Revenue. In this appeal the returns were filed and there were, we have found, proper books of account. What has been at issue is the veracity of the Appellant's account of its trading activities with named customers. The issue has resolved itself to a simple question of whether the Appellant can be treated as having met the conditions for zero-rating of its supplies to certain customers. The tribunal has found that the relevant conditions have not been met and the supplies cannot accordingly be zero-rated

90. In these circumstances it is the tribunals finding that the Respondents were entitled to assess the sales as subject to the charge to VAT which would have been appropriate for sales to customers in the UK.

91. The tribunal confirms the Notice of Amended Assessment dated 10 December 2012 and the Adjustment communicated to the Appellant on 27 November 2012. It was suggested that the tribunal need not be concerned about the figures set out in the Notice and Adjustment and it has not therefore reviewed these. It is understood that the parties are agreed with respect to the figures but if that proves not to be the case the tribunal will on application being made address this aspect.

91. Accordingly this appeal is dismissed.

**CHRISTOPHER HACKING**
**TRIBUNAL JUDGE**

**RELEASE DATE: 4 SEPTEMBER 2015**