TC07736

VAT—Appeal against assessment—Zero-rating of goods on the basis that they were acquired in another Member State by a person liable for VAT on the acquisition—Requirements for zero rating not met—Whether Appellant required to account for the VAT

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/01072

BETWEEN

ROY REANEY
T/A ARMAGH MARBLE **Appellant**

-and-

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

TRIBUNAL: JUDGE CHRISTOPHER STAKER
CELINE CORRIGAN

Sitting in public at Belfast on 11 June 2019

Mr James Stinson, accountant, for the Appellant

Mr Gareth McKinley, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. The Appellant appeals against an assessment made under s 73 of the Value Added Tax Act 1994 ("**VATA**"), giving effect to a finding by HMRC that the Appellant had not been entitled to zero rate certain supplies.

2. At the hearing of this appeal, the positions of the parties were in short as follows. The Appellant contended that he had made the supplies to a customer who had provided him with a valid Republic of Ireland VAT number, and that at the time of supply he had made reasonable checks to verify the validity of that VAT number and subsequently never had reason to suspect that there was any problem with that VAT number. HMRC contended that at the time of supply the customer did not have a valid Republic of Ireland VAT number, and that the Appellant should have been aware of this if he had made appropriate checks.

3. In post-hearing written submissions, the positions of the parties were in short as follows. The Appellant states that he has now become aware that the supplies were in fact used in the construction of a house in the United Kingdom rather than in the Republic of Ireland. However, he now claims that for other reasons either he is entitled to zero rate the supplies, or the appeal should be allowed on the basis that otherwise there would be unjust enrichment on the part of HMRC. HMRC contend that these alternative arguments of the Appellant should be rejected.

BACKGROUND

4. The Appellant, Mr Roy Reaney, is the owner of a business called Armagh Marble. At all material times he traded from a business premises in Armagh in Northern Ireland. The business has been registered for VAT since 2002.

5. At the hearing, the Appellant said as follows. He has been in business some 21 years. The business quarries Armagh limestone. The limestone is transported by the business from the quarries to its yard where it is processed and packed for lifting. The processing is very bespoke, and specific to each job. It takes a long time, and involves a lot of detail, including hand carving. It is high-end work for very expensive projects.

6. Between 17 February 2014 and 25 June 2015, the Appellant issued some 11 zero rated invoices to a customer named in the invoices as "N.V.T." ("NVT"). The invoices give an address for the customer in Dundalk, in the Republic of Ireland, and give a Republic of Ireland VAT number for the customer. In the first 9 invoices, the details of the supply are "first payment" to "9th payment" respectively, and in the last two invoices the supply is described simply as "payment".

7. The Appellant has also produced 4 estimates dated June and July 2013, which he says relate to the same contract. These give the customer name as "Gary Mullan", and include the statement "Supply prices Ex Yard".

8. HMRC have provided evidence of, and the Appellant has not sought to dispute, and in any event on the evidence the Tribunal finds to be established, the following. The name of the trader holding the Republic of Ireland VAT number stated on the invoices was Mr Neil Gerard Valley. The date of VAT registration of the business having that VAT number was 1 January 2009. The business was VAT registered as having trade class 46710, "Wholesale of solid, liquid and gaseous fuels and related products". The registered address of the business was an address in Northern Ireland. That business was deregistered for VAT by a decision of the authorities in the Republic of Ireland made on 10 April 2014. That decision retrospectively deregistered the business as from 31 August 2013.

9. On 29 September 2017, a VAT inspection visit was conducted at the Appellant's premises by HMRC Officer Donaldson. Following the visit, in a letter dated 19 January 2017, Officer Donaldson informed the Appellant that VAT should have been charged on the invoices referred to in paragraph 6 above, and set out the VAT that she considered the Appellant to be liable to pay.

10. In an e-mail to HMRC dated 10 February 2017, the Appellant provided the following explanation. The manufacture of the products he supplies takes several months. He personally had a meeting with Gary Mullan and his architect in June 2013 after which the price and payment arrangements were agreed. At that stage the Republic of Ireland VAT number was registered and valid, and the Appellant took all reasonable precautions to ensure its validity.

11. On 22 February 2017, HMRC issued an assessment to VAT.

12. In a letter to HMRC dated 13 March 2017, the Appellant requested a review of the matter. The Appellant stated that authorities in the Republic of Ireland had advised him that a deregistered VAT number can still show up as valid on the VIES system up to 9 months after deregistration.

13. In a further letter to HMRC dated 21 April 2017, the Appellant stated that he had commenced business with this client before the VAT deregistration had occurred, and that he had checked the VAT number on the Europa website on 11 April 2014 and it showed as valid.

14. In an e-mail dated 14 September 2017, Officer Donaldson advised the Appellant that the authorities in the Republic of Ireland had now confirmed that the decision to deregister had been taken on 10 April 2014 and had been backdated to 31 August 2013. Officer Donaldson stated that in the light of this information, payments for the Appellant's first two invoices dated 17 February 2014 and 4 March 2014 would be excluded from the calculation of the Appellant's VAT liability. On 27 September 2017, a revised VAT assessment was issued accordingly.

15. In a letter to HMRC dated 11 November 2017, the Appellant requested a review of the assessment.

16. On 28 December 2017, HMRC issued a review decision, upholding the amended assessment. The decision concluded that at the time of supply, the customer did not have a valid Republic of Ireland VAT number, and the Appellant did not meet the conditions of zero rating in s 30(8) VATA. HMRC considered that the supplies made by the Appellant to this customer were infrequent and not continuous, and that it would have been reasonable for the Appellant to make new verifications for each supply.

17. On 26 January 2018, the Appellant instituted the present Tribunal appeal.

THE HEARING

18. At the hearing, by consent, the name of the Appellant was changed from Armagh Marble Ltd to Roy Reaney trading as Armagh Marble.

19. At the hearing, the Tribunal heard the witness evidence and arguments. There were two document bundles and an authorities bundle for the hearing.

20. After the hearing, the Tribunal issued directions:

    (1) for HMRC to provide details of all names and addresses to which the Republic of Ireland VAT number had historically ever been registered, and for the Appellant to have the opportunity to make any additional statement in relation to this information; and

(2) for the Appellant to provide the street address of the house where the marble he supplied was used, and for HMRC to have the opportunity to make any additional statement in relation to this information.

21. Following that direction, the Appellant's representative sent written submissions dated 28 June 2019, HMRC submitted written submissions in response on 3 July 2019, and the Appellant submitted further written submissions in reply on 8 July 2019.

RELEVANT LEGISLATION

22. Section 30(8) VATA provides:

> (8) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where-
>
> (a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the members States or that the supply in question involves both -
>
> (i) the removal of 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
>
> ...

23. Section 73(1) VATA provides:

> (1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.

24. Regulation 134 of the Value Added Tax Regulations 1995 provides:

> Where the Commissioners are satisfied that—
>
> (a) a supply of goods by a taxable person involves their removal from the United Kingdom,
>
> (b) the supply is to a person taxable in another member State,
>
> (c) the goods have been removed to another member State, and
>
> (d) the goods are not goods in relation to whose supply the taxable person has opted, pursuant to section 50A 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 may impose, shall be zero-rated.

25. VAT Notice 725 (The Single Market) contains provisions dealing with the circumstances in which goods can be zero rated. The hearing bundle contained the version of this document from 24 October 2018. The HMRC skeleton argument quotes from the June 2013 version, which was the version in force during the dates of all of the invoices referred to in paragraph 6 above. This stated amongst other matters as follows.

4.3 When can a supply of goods be zero-rated?

The text in this box has the force of law

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

- you obtain and show on your VAT sales invoice your customer's EC VAT registration number, including the 2-letter country prefix code, and
- the goods are sent or transported out of the UK to a destination in another EC Member State, and
- 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

…

4.6 What should I do if I cannot meet all the conditions in paragraphs 4.3, 4.4 or 4.5?

If you cannot obtain and show a valid EC VAT registration number on your sales invoice you must charge and account for tax in the UK at the appropriate UK rate.

If the goods are not removed or you do not have the evidence of removal within the time limits you must account for VAT as described in paragraph 16.10. No VAT is due on goods which would normally be zero-rated when supplied in the UK. You may wish to consider taking a deposit for the VAT (see paragraph 5.5) if you have reason to doubt that the goods will be removed. Extra caution may be advisable if your customer:

- is not previously known to you
- arranges to collect and transport the goods, or their transport arrives without advance correspondence or notice
- pays in cash, or
- purchases types or quantities of goods inconsistent with their normal commercial practice

…

4.6 What must be shown on documents used as proof of removal?

The text in this box has the force of law

The documents you use as proof of removal must clearly identify the following:

- the supplier
- the consignor (where different from the supplier)
- the customer
- the goods
- an accurate value
- the mode of transport and route of movement of the goods, and
- the EC destination.

…

4.10 Will I have to account for VAT if my customer's VAT number turns out to be invalid?

No. But only if you have genuinely done everything you can to check the validity of the VAT number; can demonstrate you have done so; have taken heed of any indications that something might be wrong and have no other reason to suspect the VAT number is invalid.

…

THE EVIDENCE OF THE APPELLANT

26. The witness statement of the Appellant relevantly states as follows.

27. He entered into a long-term contract with the customer, which would be considered standard for his business. The stone was supplied on an ongoing basis from about August 2013 to December 2015. Invoices were issued as the project progressed. He had verified that the VAT registration number was valid. The first he knew that there might be an issue with the VAT registration number was at the time of the HMRC inspection visit. He thereafter tried to sort this out with the customer, but was unable to contact the customer. The HMRC review officer was determined to resist the Appellant's explanations and refused to make further enquiries of the Republic of Ireland authorities. His small business has never been provided with guidance by HMRC and he has been unable to find it on the website. Businesses generally do not check the VAT number of the customer for every single supply. He checked the VAT number before he began invoicing the customer which he thought was reasonable. Eventually HMRC agreed to contact the Republic of Ireland authorities, and as a result of information obtained, HMRC allowed zero rating on the first two invoices. The remaining invoices were just a continuation of the same contract, so zero rating should be allowed on all invoices.

28. At the hearing, the Appellant said in oral evidence amongst other matters as follows.

29. Because each of his jobs is different, the business keeps no stock, and it is not possible for a customer just to turn up at his premises and buy his products.

30. The marble in this case was purchased by the customer for use in the construction of a residential house. The Appellant met the architect in 2013 and was given drawings of the job. He agreed a price with the customer. He checked that the customer was VAT registered, and put the customer's Republic of Ireland VAT number on the invoices. The contract started. The Appellant met with the architect continually throughout the process. Several invoices were issued along the way, but they were all part of a single project. There were some delays in the project. The final invoice was issued in June 2016.

31. At no time during the course of the project did the Appellant have any indication that there was any problem with the customer's Republic of Ireland VAT registration. He submitted EC sales lists to HMRC as required.

32. It is typical for the Appellant's business to have a single contract with a customer lasting 2-4 years.

33. In cross-examination, the Appellant said amongst other matters as follows.

34. He has been VAT registered since 2002 and considers himself to be aware of his VAT responsibilities. He cannot remember whether HMRC Officer McGlinchey gave him VAT Notice 725 in 2005. He does not recall a telephone conversation with HMRC on 24 January 2005.

35. When asked how he had verified the customer's VAT number, the Appellant said that the customer had provided him with a VAT number which he had checked on the website.

This came back as a company name called NVT. He did not keep a copy of what he found on the website. The customer also gave him an address which also checked out. When it was put to him that the name associated with that VAT number was Neil Gerrard Valley, the Appellant said that he had never heard that name before and that the name he put on the invoices was NVT. When it was put to him that the name used on the estimates was Gary Mullan, the Appellant said that he had been given a company name to use on the invoices, NVT, and suggested that the letters N and V in that name might refer to Neil Valley, with the T possibly standing for something like Trading. The Appellant noted that HMRC had allowed him to zero rate two of the invoices, so presumably none of this had been a problem for HMRC.

36. When asked how he had been introduced to Mr Mullan, the Appellant said that Mr Mullan had either phoned him or come to his premises. Mr Mullan then introduced him to the architect, and he met Mr Mullan's wife as well. Everything seemed legitimate. He then asked Mr Mullan for a VAT number and this checked out.

37. When asked how he received payment, the Appellant said that he would send an invoice, and that Mr Mullan would come down and give him a cheque or pay cash. He said that he could not remember what name the cheque was in. He had never dealt with Mr Mullan before, and most customers he only deals with once. He presumed that the house being built was Mr Mullan's home, but he did not ask and it was not his issue. The Appellant then said that he thought Mr Mullan had been introduced to him via another customer.

38. The Appellant said that he agreed a price for the entire project at the start. He said that his business has an advantage in that their product is so unique that the customer cannot switch to a different supplier part way through the project.

39. The Appellant said that he did not have time to check the customer's VAT number every time he undertakes a sale. He said that he regularly put in EC sales lists as required, and HMRC never came back to him suggesting that there was a problem with the VAT number.

40. When asked if this contract was a significant contract for the Appellant, he responded no. He said that his business does high-end work for very expensive projects.

41. The Appellant said that the customer came and collected the goods from his yard and took them away.

THE EVIDENCE OF MR STINSON

42. The Appellant's evidence included a "statement" of his representative, Mr Stinson. To the extent that this contains legal argument, these arguments have been considered. Mr Stinson expresses the view that the supply of marble for the building project was a single continuous order rather than separate supplies, and that it was reasonable for the Appellant to verify the VAT number at the beginning of this single supply. The invoices were not separate supplies, but a means of recognising periodic payments made by the customer for a single supply. The statement refers to the stone being made "available for collection by the customer".

THE EVIDENCE OF HMRC OFFICER DONALDSON

43. The witness statement of HMRC Officer Donaldson sets out the procedural history of the case. It also relevantly states as follows. At the VAT assurance visit, the Appellant had been asked how he dealt with EC sales and he advised that the checks may not have been as thorough as they should have been. There was no evidence of removal of goods across the land boundary.

THE EVIDENCE OF HMRC OFFICER ARMSTRONG

44. As HMRC Officer Donaldson was not available to attend the hearing, Officer Armstrong attended to give oral evidence. He said amongst other matters as follows. He was Officer Donaldson's manager. At the time of Officer Donaldson's witness statement, he was not aware that the supplies had been made to Mr Mullan rather than to Mr Valley. Had this been known, HMRC might not have allowed the first two invoices to be zero rated. The Republic of Ireland address comes up on none of the HMRC systems.

THE APPELLANT'S SUBMISSIONS AT THE HEARING

45. The Appellant did everything that a reasonable person would be expected to do in this situation. He was continuously engaged with the customer over a continuous period of approximately two years and viewed the project as one continuous order. At the outset, he verified through the Europa website that the customer was VAT registered in the Republic of Ireland. He had no reason to suppose that the customer had lost his VAT registration in the Republic of Ireland, as the project continued uninterrupted and as expected.

46. VAT Notice 725 states that "you will be able to rely on the validation record as one element to demonstrate your good faith as a compliant business", and that if a customer's VAT number turns out to be invalid, it will not be necessary to account for VAT "if you have genuinely done everything you can to check the validity of the VAT number". There were no indications in this case that caused or should have caused the Appellant to suspect that the VAT number was invalid. The correct dates for the supply are not the dates of the invoices but rather the dates on which the Appellant completed work on the stone and made it available for collection by the customer, which was earlier than the dates stated on the invoices. The majority of the stone was in place on the dwelling by 28 January 2015.

HMRC'S SUBMISSIONS AT THE HEARING

47. The onus of proof rests with the Appellant, and the ordinary civil standard of the balance of probabilities applies.

48. Section 30(8) VATA and regulation 134 of the VAT Regulations provide for zero rating of supplies of goods to persons in another Member State only where *HMRC* are satisfied that the supply involves their removal from the UK, the supply is made to a person taxable in another Member State, and that the goods have been removed to another Member State. HMRC are not so satisfied. The customer was not VAT registered in the Republic of Ireland at the time that the relevant invoices were issued. The Appellant has not met the legal requirements for zero rating.

THE APPELLANT'S POST-HEARING SUBMISSIONS

49. The address of the house at which the building works were undertaken was in fact in Armagh in Northern Ireland, and not in the Republic of Ireland. This is a revelation to the Appellant who can only speculate as to why Mr Mullan would have given a Republic of Ireland VAT number, other than to note that this was an undeveloped site in a remote location close to the border with the Republic of Ireland.

50. On the basis of this new information, the Appellant contends that he was entitled to zero rate the supplies on the basis that this was a new-build property. Reliance is placed on VAT Notice 708, paragraph 11. The Appellant carries no stock but provides stone that is cut in a bespoke way specifically for each individual job according to architects' drawings. He is not

a retailer, builder's merchant or supplying goods from stock. He was providing work that was integral to the construction process. He was on the building site on a number of occasions directing and advising on the integration of the materials into the structure. He was thus providing a service, and the stone was building material provided as part of his service.

51. Alternatively, if the supply would otherwise fall to be standard rated, the customer would have been entitled to reclaim the VAT under the DIY scheme. If HMRC were to succeed in this case, the result would be one of "unjust enrichment". The Appellant supplies what he says is evidence that the property is a new build, that it is located in Northern Ireland, and that it is linked to Garry Mullan.

52. The supplies therefore should be zero-rated, although for different reasons to those originally given by the Appellant.

HMRC'S POST-HEARING SUBMISSIONS

53. Pursuant to paragraph 11 of VAT Notice 708, the Appellant was required to standard rate the goods. The Appellant is not a builder.

54. There are various requirements that Mr Mullan would have been required to meet in order to qualify for a refund of VAT under the DIY scheme. It cannot be assumed from the mere fact that the DIY scheme exists that Mr Mullan would have qualified for a refund of VAT under that scheme. There is therefore no unjust enrichment.

THE TRIBUNAL'S FINDINGS

55. The Tribunal is satisfied on the evidence that the authorities in the Republic of Ireland deregistered the business bearing the Republic of Ireland VAT number on 10 April 2014, with retroactive effect to 31 August 2013.

56. The evidence indicates that the marble was collected by Mr Mullan from the Appellant's business premises in Armagh (see paragraphs 7, 41, 42 and 46 above to the effect that the marble was collected by the customer). Although the Appellant argued that the marble was collected before the dates of the invoices, there is no other evidence of this, and there is no evidence at all of the precise dates that the marble was physically taken by the customer. The Tribunal finds on a balance of probability that payment was made and the invoices were issued at the same time that the marble was collected by the customer. This is consistent with the Appellant's evidence that the invoices were paid by Mr Mullan who would come down and give him a cheque or pay cash.

57. The Appellant contends that he had a single contract with the customer to make a single supply of marble, and that payment was made in several instalments, such that each invoice represents one instalment payment for this single supply. However, even if this were the case, a separate tax point was created each time that the Appellant received a payment and issued an invoice. The Appellant was therefore not entitled to zero rate any of the invoices if the customer did not have a valid Republic of Ireland VAT number at the date of the relevant invoice.

58. On that basis, the Tribunal finds that the invoices to which this appeal relates were required to be standard rated. It is therefore unnecessary for the Tribunal to make findings as to whether there were also other reasons why the invoices could not be zero rated.

59. The issue is whether the Appellant is now in consequence required to account for the VAT.

60. The Appellant relies on paragraph 4.10 of VAT Notice 725. He contends that he had "genuinely done everything [he could] to check the validity of the VAT number" and had "no other reason to suspect the VAT number is invalid".

61. However, there is no evidence apart from the Appellant's own witness evidence that he ever made any effort to check the validity of the VAT number at all. The Tribunal therefore has to make an assessment of the reliability of his witness evidence.

62. The Appellant's evidence is that he dealt with Mr Mullan. He had never heard the name Neil Valley, and there is no suggestion that he had any knowledge of, or ever had any dealings with, a company called NVT. There is no suggestion in the evidence that he ever consciously thought or was told that NVT was a company owned or otherwise connected with Mr Mullan. His evidence was that he simply put on the invoices the VAT number given to him by Mr Mullan.

63. The Appellant's evidence is that he was well aware that the marble he was supplying was to be used in the construction of a residential building. He says he was in contact with Mr Mullan and his architect over a period of about 2 years. He said that he presumed, even if he did not know, that this building was to be Mr Mullan's own residence. It therefore must have appeared likely to him that the goods were being acquired by Mr Mullan as end-user rather than in the course of Mr Mullan's business. He allowed the marble to be collected from his business premises in Armagh. There is no evidence that he ever took steps to ensure that the person collecting the goods was from NVT. There is no evidence of anyone being involved other than Mr Mullan. There is no evidence that the Appellant ever took any steps to ensure that the goods were exported to the Republic of Ireland. It is said by his representative that he was on the building site on a number of occasions, meaning that he knew the exact location of the end-use of the marble. Despite this, he claims to be surprised to discover that the site was in Northern Ireland rather than the Republic of Ireland. However, even if the property was very close to the border, and even if on small roads it can be hard to tell exactly where the border lies, in circumstances where the entitlement to zero rating depended on the goods being exported from the UK, this is a matter to which the Appellant in the circumstances would be expected to have paid close attention.

64. The Appellant has argued that he is a small family business who is reliant on guidance issued by HMRC. However, his evidence is that he has been in this business for some 21 years. Furthermore, the business produces expensive, high-end unique products. His evidence was that he routinely receives orders in the tens of thousands of pounds. His business premises are located relatively close to the border with the Republic of Ireland. The Tribunal finds it quite implausible that he would in the circumstances not have at the very least a good basic knowledge of the requirements for zero rating sales on the basis that they are being exported to the Republic of Ireland. The Tribunal finds it implausible that a person of the Appellant's background would think it sufficient, in order to zero rate sales to a customer collecting goods from his business premises for apparent use in the customer's own private residence, that the customer has provided a valid Republic of Ireland VAT number, without any obligation to ensure that the goods are in fact removed to the Republic of Ireland.

65. For these reasons, the Tribunal finds the Appellant's witness evidence to be unreliable. The Tribunal is not satisfied on a balance of probability that the Appellant ever undertook any checks into the validity of the VAT number.

66. Furthermore, even if the Appellant had undertaken such checks, that would be insufficient to avoid liability to account for the VAT. Paragraph 4.10 of VAT Notice 725 contains an additional requirement that the trader must have "taken heed of any indications that something might be wrong". On the evidence, there were clear indications that something

might be wrong. The Appellant assumed that the marble was intended to be used for Mr Mullan's own private dwelling. The Appellant had been to the location where the marble was being used, and should have been aware that it was not in the Republic of Ireland.

67. The Tribunal therefore rejects the Appellant's arguments based on the claim that he did all that he reasonably could to verify the VAT number.

68. The Tribunal's direction referred to in paragraph 20 above requested HMRC to provide details of all names and addresses to which the Republic of Ireland VAT number had historically ever been registered. HMRC have not provided that information. However, having reached the conclusion above for the reasons above, the Tribunal is no longer of the view that this information might take matters further. The burden is in any event on the Appellant to show that he did all that could reasonably be expected of him, and not on HMRC to show that he did not.

69. As to the argument based on VAT Notice 708, the Tribunal finds as follows. The Tribunal considers it quite clear that even if the Appellant's evidence were accepted in full, the Appellant was not a builder supplying the construction of a new qualifying dwelling. Paragraph 2.1.2 of VAT Notice 708 states that if he was a sub-contractor working to a main contractor, he might have been able to zero rate his supplies if the building as a whole was zero rated. However, insufficient evidence has been provided to establish that he was a sub-contractor working to a main contractor. On the contrary, the evidence suggests that he was making suppliers to Mr Mullan as the end-consumer rather than to a main contractor. In any event, even if he were a sub-contractor working to a main contractor, insufficient evidence and arguments have been provided to establish positively that all of the necessary requirements were met for the building project as a whole to be zero rated. Again, the burden is on the Appellant to show that all of the requirements are met, and not on HMRC to show that they are not.

70. The argument based on the DIY scheme has no merit at all. If the building project in this case had satisfied the criteria of the DIY scheme, it might, depending on the circumstances, have been possible for the DIY builder to reclaim the standard rate VAT that the Appellant should have charged on the marble. However, the DIY scheme does not entitle a supplier of a DIY builder to zero rate supplies made to a DIY builder. The argument would therefore fail even if sufficient evidence had been provided, which it has not, to establish that this building project satisfied all the requirements of the DIY scheme. There is no "unjust enrichment" on the part of HMRC. Under the DIY scheme, VAT is only reclaimed where the builder or DIY builder makes an application. If no such application is made by the builder or DIY builder, the VAT is not repaid. This is not contrary to principles of unjust enrichment.

CONCLUSION

71. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

72. 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.

DR CHRISTOPHER STAKER

TRIBUNAL JUDGE

RELEASE DATE: 10 JUNE 2020