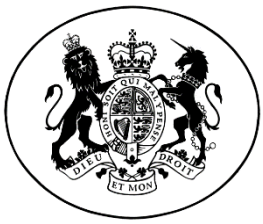
[2020] UKFTT 0451 (TC)



TC07927

Appeal number: TC/2018/02299

VAT – caravan disconnection fees – appeal upheld – partial exemption – deductions for input tax – Schedule 36 Notice penalties – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

TALLINGTON LAKES LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE FAIRPO
MR MICHAEL BELL ACA CTA

Sitting in public at London on 25 March 2019

Mr Morgan, director, for the Appellant
Mr Wilson, litigator, for the Respondents

DECISION

Introduction

1. This is an appeal against various VAT assessments and penalties, set out at appendix 1 of this decision.

Background

2. The appellant undertakes a range of activities as a leisure park, including the sale of caravans including the sale of caravans used as year-round residential properties in the park and the provision of sites for such residential caravans, the letting of caravans, holiday lettings, various sports facilities, and operating a shop, restaurant and bar

3. Following a routine VAT inspection on 10 October 2014 to verify a repayment VAT return, and considerable subsequent correspondence, HMRC issued the assessments appealed against.

4. The issues for this tribunal are:

(1) whether the method used by the appellant in calculating output tax on the sale of removable goods in new caravans gives a fair and reasonable result;

(2) whether the caravan disconnection fees charged by the appellant are standard-rated services;

(3) whether the appellant's irrecoverable input tax is below the de minimis threshold for partial exemption;

(4) whether the appellant is entitled to deduction of input tax on two specific transactions; and

(5) whether penalties in respect of a Schedule 36 Notice were correctly raised

Sales of removable goods

5. The appellant sells caravans which contain removable goods. There was no dispute that VAT was chargeable on the removable goods element of a caravan sale: the dispute between the parties is as to whether the appellant's method of calculation of the output tax attributable to the removable goods gave a fair and reasonable result.

Appellant's submissions

6. The appellant charged a standard price of £3,000 for removable goods within a single unit and £5,000 for removable items within a double unit. In correspondence with HMRC they had explained that many purchasers provide their own contents for caravans and so goods are often removed from the caravans before sale. The goods removed were used by the appellant in their rental caravans, to keep those up to date. The sales figure of £3,000 and £5,000 were used because this was considered to be the maximum that the removable goods could be sold for as second-hand.

7. The appellant argued that the value of the removable goods should be the value of those goods in their hands as they sell them. As they were not authorised retailers for the removable goods, it was argued that the value of those items in their hands was less than that which would apply if sold by an authorised retailer. The caravans were sometimes held for two years or more before sale, and no warranty was offered by the appellant on the removable goods when these were sold with the caravan; the lodge manufacturer also provided no warranty in respect of the goods.

8. The appellant sold removable goods and appliances which had been taken out of caravans through third party online marketplaces. The price achieved for those goods is substantially less than the prices charged by authorised retailers. Certain items were of very little value when removed from a caravan, such as fitted carpets. However, the appellant's evidence was that fitted carpets were not generally removed from caravans.

9. The appellant argued that the same applied to furniture such as three-piece suites. Appliances such as washing machines and fridges fetched much lower prices than those achieved by authorised retailers.

10. Manufacturers would also use excessive valuations for removable goods supplied within a caravan, and it was argued that these valuations were arbitrary and random between manufacturers and could not form the basis for a calculation of output tax. The appellant submitted that this had been shown in the First-tier decision of *Colaingrove* [2013] UKFTT 295 (TC) (also referred to by reference TC02701). HMRC's view that such values could form the basis of output tax was inappropriate as the only proper criteria would be the value of the items in the appellant's hands.

11. HMRC had suggested in correspondence that the value attributed to removable goods should increase in line with the mark-up charged on the caravan sale. The appellant argued that the mark-up reflected the location of the caravan and the amenities offered and had no relevance to the removable goods supplied.

12. The average VAT figure of £781.97 applied by HMRC had been calculated by the appellant on a without prejudice basis to certain periods in order to get a repayment from HMRC; the appellant did not agree that it represented a fair and reasonable apportionment and did not agree that it should be applied retrospectively as HMRC had done in their assessment.

HMRC submissions

13. HMRC submitted that the caravans were sold as new caravans. The removable goods supplied with the caravans were not second-hand and would be regarded as new by customers. As such, their value should not be regarded as having decreased in the hands of the appellant.

14. HMRC's evidence was that the purchase invoices for caravans showed the removable goods separately, with VAT amounts identified as between £5,824 and £10,183.28 on the invoices checked. The sales invoices for the same caravans sold by the appellant valued the goods at either £3,000 or £5,000.

15. HMRC's assessments were based on a calculation provided by the appellants for the periods 06/14 to 12/15, which established an average amount of additional VAT of £781.97 for removable goods per new caravan sold in that period. This was based on the difference between the VAT charged by the manufacturer and the VAT which had been charged by the appellants on the removable goods in the same caravan. The appellants had offered to apply this amount from the 12/15 period onwards as a compromise offer but were not prepared to backdate it.

16. The assessments were therefore based on the appellant's own figures, extrapolated across the periods to be assessed, and represented a neutral position: that is, that the appellant's output tax in respect of the removable goods matched the input tax claimed on those goods.

Discussion

17. The burden of proof is on the appellant to show that the methodology they have used to calculate output VAT is fair and reasonable. On the evidence provided, we are not satisfied that the appellant has discharged that burden.

18. Although the appellant suggests that their onward sale of the goods meant that they should be regarded as second-hand, and that the price was based on what they could achieve for the goods if they were removed and sold on third party marketplace, the evidence was that the goods sold with the units were the goods installed by the manufacturers. They were not goods which had been removed and installed and could no more be considered to be second-hand than any other goods acquired by a retailer for resale in the same condition as supplied by the manufacturer.

19. The argument that the goods might have been held for some time before sale is not, we consider, useful: the caravans had sat unsold for the same period of time, and there was no suggestion from the appellant that they would sell such caravans at less than the price that they had paid for them.

20. Although the appellant argued that goods were often removed from caravans before sale, we were not provided with any evidence in support of this statement. The appellant provided no records to show whether any goods had been removed from each caravan before sale, although it had been able to confirm in correspondence that particular caravans had been sold without any goods being removed.

21. For the December 2015 quarter, the two caravans sold were stated to have been sold complete with the removable goods supplied by the manufacturer. Two other sales, in May 2014 and June 2014, were stated in a letter to HMRC dated 3 March 2015 to have been sold as supplied by the manufacturer: "we have not added or removed any items between purchase or sale".

22. The purchase invoices showed that the appellant had paid £6,396.45 for the removable goods on one unit, the invoice date for which was the day before the onward sale. The sale price of those goods to the appellant's customer was stated to be £5,000. For the other unit, the manufacturer's invoice showed a purchase price for removable goods of £7,522.50; these were sold to the appellant's customer for £3,000.

The manufacturer's invoice for this unit was dated the same day as the sale on to the appellant's customer.

23. There was no distinction in the price charged between caravans which were sold with all of the removable goods supplied by the manufacturer and those sold with goods removed. The appellant's own evidence was that items fitted to the caravans such as carpets, which they said would be worth very little second-hand, were not generally removed from the caravans.

24. The First-tier decision in *Colaingrove* referred to by the appellant does not assist their position. Whilst some of the discussion of valuation methods in that decision does include submissions that the manufacturer's prices may not reflect the cost of the relevant goods if purchased new in the open market, the decision does not conclude that the taxpayer should charge less than the price charged by the manufacturer: it concluded that, in the circumstances of that case, a mark-up of 20% over the price charged by the manufacturer was the best method of achieving a fair and reasonable apportionment for VAT purposes (§75). There was no suggestion in any of the valuation methods discussed in that case that the second-hand value of the goods should be used.

25. We note that HMRC's assessment in this case, on a neutral basis as to input and output tax, is rather more generous to the appellant that the method considered to be fair and reasonable by the Tribunal in *Colaingrove*.

26. Accordingly, the appellant's appeal in respect of the assessment to output tax on removable goods is dismissed.

Caravan disconnection fees

27. The appellant charged a flat rate "disconnection fee" of £600 when a licence agreement in respect of a caravan was terminated or when people moved from one caravan one site to another. The appellant had not charged VAT on these fees, treating them as zero-rated. The appellant's evidence was that the fees covered physically disconnecting gas, waste, water, electricity, television and telephone utilities, and removing the anchors holding the caravan in place.

28. It was common ground that the VAT treatment of connection fees when a caravan licence agreement is entered into followed the VAT liability of the provision of the site, as the sites were not individually metered, following VAT Notice 701/20, §3.2.

Appellant submissions

29. The appellant submitted that the disconnection of a caravan was part of the supply of the site and so the fee should be subject to VAT in the same way as a connection fee. It was the same operation, simply carried out in reverse.

30. Most disconnection fees were charged where people moved a caravan from one site to another within the park and so the disconnection fee was charged in respect of the supply of the new site; there had been no cessation of any supply to which the fee

was connected. The fact that the licence agreement did not expressly permit owners to move from one site to another did not mean that they were not able to agree to do so.

31. Even if the caravan owner left the site and the caravan was disconnected and taken to a holding compound, the licence agreement continued because the owner continued to pay for the unit to be on site. The appellant argued that, accordingly, there had been no termination of the licence agreement and so the disconnection fee was charged in respect of the continuing supply of services.

HMRC submissions

32. HMRC submitted that, although the connection fees were ancillary to the provision of the site as they were provided for the better enjoyment of the site, the same did not apply to the disconnection fees as these were only charged when the occupation of the site had come to an end. As the site supply has ended, the fees cannot be connected to the supply of the land.

33. There was no statutory provision for a reduced rate in respect of the fees and, as such, the disconnection fees were subject to VAT at the standard rate.

34. HMRC also noted that the appellant's website stated that the fee was subject to VAT, although the appellant contended that this was simply an error on the website.

Discussion

35. We note first that the appellant contended that the connection and disconnection fees should be regarded as zero-rated. However, the appellant also agreed that these fees should follow the VAT liability of the main supply, the provision of the site. The provision of a caravan site for year-round residential use is exempt, not zero-rated (para 4.1 of VAT Notice 701/20, and generally following the VAT treatment of residential property). The connection fees are, therefore, exempt from VAT.

36. HMRC contended that the connection fees are considered to be ancillary to the main supply of the site because the connection is provided for the better enjoyment of the site. However, the disconnection fee arises after the main supply has ceased and so cannot be connected to that supply.

37. The appellant contends that the disconnection fees are part of the overall supply of either the original site, or that they form part of the supply of an alternative site when the caravan owner moves site within the park. Although HMRC argued that the licence agreement does not provide for a move of site within the park at the instigation of the customer, we note that the agreement does not expressly forbid such a move and that the parties are free to agree to vary the terms of the agreement.

38. In effect, the question that arises is whether the disconnection fee forms part of the single supply of the site or whether it is a distinct and independent supply, separate from the supply of the site. It is clear that the connection fees are connected to the provision of the site; HMRC submitted that this was because they were provided to better enjoy the main supply of the site.

39. HMRC referred to para 3.2 of Notice 701/20 in respect of the connection fees: this paragraph refers to connection fees for main services (electricity, gas, water and sewerage), rather than all connection fees, although clause 3.3 note that a fee for positioning a caravan will follow the VAT liability of the caravan where the positioning is part of the supply of the caravan.

40. We note that para 4.1 of Notice 701/20 provides in respect of caravans intended for use as a principal private residence that:

> "Pitch agreements impose certain obligations upon site owners such as the construction of pitches, bases and the park infrastructure. If you raise a one-off charge which is directly related to these obligations it will follow the liability of the supply of the pitch."

41. HMRC accepted (in Officer Hazell's witness statement) that the caravans were used for year-round residential occupation without restriction.

42. It was not suggested that the utilities were not provided via the park infrastructure. The licence agreements supplied stated that the appellant was to undertake any siting or removal work in order to maintain standards in the park, and that the appellant was obliged to provide services (not fully detailed in the copy agreements provided) to the caravan. The appellant was also permitted to move the caravan in order to undertake maintenance of the park. As such, we consider that the disconnection fee would fall into the category of a one-off charge directly related to the appellant's obligations as site owner.

43. We would note also that a single supply for VAT purposes will arise where supplies are inextricably linked (not merely where the ancillary supply allows for the better enjoyment of the main supply). It seems to us that a disconnection fee in respect of a caravan site will be inextricably linked to the provision of the site even if the charge arises after the occupation of the site has come to an end. Although HMRC's view was that the charge arose after the supply of the site had ended, we note that the charge is anticipated by the licence agreement (para 12(b)) and is not something which is identified to the caravan owner only after the supply has ended.

44. On that basis, given that HMRC accepted that the provisions of Notice 701/20 should apply in respect of the connection fee, we consider that the provisions of Notice 701/20 would also apply in this context such that the disconnection fees would follow the liability of the site for VAT purposes and so will be exempt from VAT. The appellant's appeal against the assessment to standard rate output tax in respect of these fees is therefore upheld.

Redevelopment costs - partial exemption

45. The appellant had treated plot fees as zero-rated, rather than exempt. As the plots were available for year-round residential use, these fees were exempt from VAT. The appellant did not dispute this. The result was that, as part of the appellant's income was exempt from VAT, the question of partial exemption arose in relation to recovery of input VAT on expenditure.

Appellant submissions

46. The appellant submitted that there had been no breach of the partial exemption limits because:

(1) residual non-attributable input VAT should only include items which are genuinely non-attributable to any particular supply

(2) directly attributable exempt supply VAT should include only small amounts of petrol and diesel together with plant repairs and plant parts

47. The appellant contended that HMRC's view that input tax on building and construction materials was 100% residual, because the materials are used for exempt plots and zero-rated residential sales units, was artificial. The plots fees were a small proportion of the value of the zero-rated caravan sales and were not the function or purpose of the business. The fees were charged only to cover ongoing maintenance costs in respect of the plots and in some cases were not charged in the first year after a sale. As such, any development costs incurred by the appellant in relation to the site should not be regarded as related to the generation of VAT exempt plot fees and should, instead, be wholly attributable to the sale of caravans as it is the roadways and landscaping that create the profit margin on the sale of caravans.

48. The appellant also argued that other income was mere recovery of costs (for example, charges for utilities) and so should not be taken into account as it was not a profit-generating aspect of the business.

49. Approximately 75% of the construction and building materials were used in developing new areas of the site and therefore attributable to zero-rated caravan sales; 25% of the materials were used for other activities across the site, such as decking around the swimming pool, parts of a ski slope and climbing tower and other facilities. These were all related to taxable supplies, with fees charged separately to the sale of the caravans and plot fees. The fees charged where the same regardless of whether the user was a site resident or not.

50. The appellant also argued that a 75/25 split should be allowed as a partial exemption special method, and that their submission of a spreadsheet which used that method, sent by email to HMRC, should have been regarded as a request to use that method. It was unnecessarily bureaucratic of HMRC to require a taxpayer to specifically state that they were applying to use a special method.

HMRC submissions

51. HMRC contended that the appellant's expenditure on roadways and developing new areas of the site was attributable to both exempt (plot fees) and taxable (sale of residential caravans and other activities) income and that the VAT incurred on such expenditure should be treated as residual input tax together with other site overheads. All other expenditure which could not be considered to be directly attributable to taxable or exempt income was also attributable to residual input tax, as required by the standard calculation.

52. HMRC submitted that the exempt input tax in respect of the assessments under appeal was greater than the partial exemption de minimis per month on average for the relevant VAT quarters. The appellant had been advised to apply to HMRC for a partial exemption "special method" if not satisfied that the standard method gave a fair result. No such application had been made, and so the partial exemption standard calculation had to be applied. The appellant's correspondence had sought to challenge HMRC's calculations rather than request approval for a special method and, at best, had been a request for HMRC to apply discretion and accept the alternative calculations for the periods under appeal. HMRC contended that they had no such discretion.

Relevant law

53. Value Added Tax Regulations 1995 (SI 1995/2518) state, as relevant:

> Para 101 Attribution of input tax to taxable supplies
>
> (1) Subject to regulation regulations [102, 103A, 105A and 106ZA]2, the amount of input tax which a taxable person shall be entitled to deduct provisionally shall be that amount which is attributable to taxable supplies in accordance with this regulation.
>
> (2) [Subject to paragraph (8) below and regulation 107(1)(g)(ii),]5 in respect of each prescribed accounting period—
>
> …
>
> (b) there shall be attributed to taxable supplies the whole of the input tax on such of those goods or services as are used or to be used by him exclusively in making taxable supplies,
>
> (c) no part of the input tax on such of those goods or services as are used or to be used by him exclusively in making exempt supplies, or in carrying on any activity other than the making of taxable supplies, shall be attributed to taxable supplies, …
>
> Para 102 Use of other methods
>
> (1) Subject to [paragraphs (2) and (9]3 below and regulations 103, 103A, 103B, 105A and 106ZA, the Commissioners may approve or direct the use by a taxable person of a method other than that specified in regulation 101 ….
>
> …
>
> (3) A taxable person using a method as approved or directed to be used by the Commissioners under paragraph (1) above shall continue to use that method unless the Commissioners approve or direct the termination of its use.
>
> …
>
> (5) Any approval given or direction made under this regulation shall only have effect if it is in writing in the form of a document which identifies itself as being such an approval or direction.
>
> …

> (9) … the Commissioners shall not approve the use of a method under this regulation unless the taxable person has made a declaration to the effect that to the best of his knowledge and belief the method fairly and reasonably represents the extent to which goods or services are used by or are to be used by him in making taxable supplies.
>
> (10) The declaration referred to in paragraph (9) above shall—
>
> (a) be in writing,
>
> (b) be signed by the taxable person or by a person authorised to sign it on his behalf, and
>
> (c) include a statement that the person signing it has taken reasonable steps to ensure that he is in possession of all relevant information.

Discussion

54. The appellant contended that they were below the de minimis threshold for partial exemption and so should be entitled to recover all of their input tax. For the reasons set out below, we do not agree that the appellant has demonstrated that the irrecoverable input tax of the business is below the de minimis thresholds.

55. The appellant's contention that costs of developing the site should be attributed only to the sale of new caravans rather than to both the sale of caravans and the ongoing plot fees is not a sustainable position: even though the income from the plot fees is obviously lower than the income from the sale of caravans, improvements and development of the site drive the placement on site of sold caravans which then generate plot fees. Even if the principal objective of the expenditure was to generate caravan sales, we consider that there is a direct link between the expenditure and the plot fees income – as described by the appellant, the business is not simply selling caravans for a one-off fee, it is selling caravans which are sited in the park and as a result of which ongoing income is subsequently received.

56. The development works will therefore clearly contribute to both income sources, the initial sale and the exempt ongoing plot fees and other income. The limited contribution of plot fees to the overall income of the business cannot be simply disregarded as we do not consider that the provision of a site in the park can be regarded as merely incidental to the sale of a caravan. Accordingly, expenditure on the development of the site contributes to both exempt and taxable supplies and, as such, cannot be solely allocated to taxable supplies. It is also clear from the legislation that such expenditure cannot be apportioned between the taxable and exempt supplies unless a partial exemption special method is agreed with HMRC.

57. The appellant contended that aspects of the business which were simply a recovery of costs should be ignored in considering partial exemption, such as re-charges for utilities (which are exempt, following the VAT liability of the site). This is, similarly, not sustainable. The partial exemption calculation, as with all aspects of VAT, depends on whether the appellant makes a supply for VAT purposes, rather than whether the appellant makes a profit on the supply.

58. The appellant contended that the spreadsheets provided to HMRC during the enquiry should be regarded as requests to use a partial exemption special method.

59. Considering the correspondence between the parties that was provided in the tribunal bundle, we do not consider that the appellant can be regarded as having made an application to be allowed to use a partial exemption special method. Although the appellant criticises HMRC's processes as unnecessarily bureaucratic, the VAT Regulations 1995 clearly set out the requirements for a partial exemption method to be applied for and approved by HMRC. The correspondence in the Tribunal bundle also clearly shows that the appellant was advised as to the steps that needed to be taken in order to have a special method approved.

60. The correspondence from the appellant throughout maintained that they considered that they had no liability under the standard calculation, as they considered that the majority of the expenditure could not be regarded as attributable to plot fees. Although they set out alternative calculations, there was no application to HMRC for approval of a special method but, at best, a request for HMRC to pick one or the other calculation for resolution of the matter as the appellant considered that both meant that there was no liability.

61. In addition, the appellant confirmed in the hearing that they had not intended that their alternative calculations be used on an ongoing basis, as would be required for an application to use a partial exemption special method. The calculations were intended to provide what they considered to be a fair and reasonable apportionment to reach resolution with HMRC with regard to these periods only.

62. As such, we do not consider that the appellant had applied to use a partial exemption special method and so is not entitled to use a partial exemption special method. We agree that HMRC do not have discretion to accept alternative calculations where no partial exemption special method has been approved. We do not consider that the appellant has satisfied the burden of proof on them to show that HMRC's analysis of their recoverable VAT using the standard calculation is incorrect.

63. The appellant's appeal in respect of the partial exemption assessment is therefore dismissed.

Input tax on large items

64. HMRC disallowed the input tax claimed by the appellant in respect of two purchases on the basis that no VAT invoices had been provided to support the claim. The input tax claims were:

(1) £1,740 in respect of "Premier M/C" in the 03/16 period; and

(2) £1,666 in respect of "Treasury Solicitors" in the 03/16 period.

Appellant submissions

65. The appellant contended that the value of the input tax was so small compared to their turnover that it was absurd not to allow the deduction.

66. Further, the enquiry had shown that they kept accurate records and so should be entitled to the reasonable benefit of the doubt.

67. The amounts in respect of Premier M/C were payments made by an employee on a credit card for a jetski and five pedalos; these had been purchased from a dealer who had subsequently gone out of business. The employee produced the credit card slips were produced, but not the invoices, and had since been dismissed for theft of diesel and other items from the business. The appellant stated that VAT was included in the price paid for the relevant goods.

68. The solicitors' invoice also included VAT but, despite chasing the supplier, they refuse to provide the invoice.

69. The appellant requested that the tribunal give them reasonable benefit of the doubt.

HMRC submissions

70. HMRC submitted that the appellant is required to satisfy two conditions in order to be able to claim input tax (per *Terra Baubedarf-Handel* [2004] C-152/02):

(1) the goods or services must have been supplied; and

(2) the taxable person holds a valid purchase invoice or such other documentation is HMRC may direct

71. As no valid purchase invoice had been supplied for either claim, and no alternative evidence had been provided as requested by HMRC, no deduction could be allowed.

Discussion

72. The appellant accepts that they do not have the requisite evidence. This is not an area in which the Tribunal has discretion to allow a deduction and so the appellant's appeal in respect of these input tax items is dismissed.

Penalties in respect of Schedule 36 Notice

73. During the course of the enquiry, having received accounts information from the representative member of the appellant's VAT group, HMRC issued a Schedule 36 Notice on 9 August 2016, requesting an electronic copy of the accounts data from the other VAT group members for the period 01/04/14 to 31/03/16. The information was requested by 13 September 2016.

74. The appellant wrote to HMRC to advise that they could not provide the data by that date due to the pressure of work during the peak season and planned staff absences. HMRC responded to advise that they were seeking copies of existing material, rather than requesting any work to be carried out on those records. They asked the appellant to detail any records which would not be available by the deadline, and why.

75. In a telephone conversation on 12 September 2016, the appellant agreed to provide the available information and identify any missing information HMRC agreed to extend the deadline for such missing information to 30 September 2016.

Appellant submissions

76. The appellant contended that HMRC had provided an unreasonably short amount of time to provide the information and resources and that the appellant had supplied what they could in the time available and thus had a reasonable excuse for the delay in responding.

77. They contended that HMRC's actions were hypocritical as there had only been a short delay and HMRC had engaged in substantial delays throughout the matter up to September 2016. The appellant felt that they were being victimised by HMRC throughout the enquiry, and that unrealistic time constraints had been imposed throughout, such a letter of 27 November 2015, received on 3 December 2015, requesting a response by 31 December 2015.

HMRC submissions

78. HMRC contended that the appellant had not provided any reasonable excuse for the delay in responding to the Schedule 36 Notice. As none of the requested information was received, an initial penalty of £300 was issued on 15 September 2016, in accordance with para 39, Schedule 36 Finance Act 2008.

79. Some of the information requested was provided on 20 September 2016; on 5 October 2016 HMRC emailed the appellant to advise them as to the information still to be received and stated that if the information was not received by 20 October 2016, HMRC would consider daily penalties.

80. Some information was provided on 21 October 2016, and HMRC agreed to extend the deadline for compliance to 27 October 2016.

81. As the failure to supply the requested information had persisted, HMRC emailed the appellant again on 3 November 2016 to advise them of the information that was still outstanding and stating that daily penalties would be issued the next day.

82. Daily penalties of £2,450 were issued on 4 November 2016, being £50 per day over a 49 day period. These were issued under para 40 Schedule 36 Finance Act 2008. The penalty notice requested the outstanding information by 9 December 2016. The appellant emailed HMRC on 4 November 2016 with some information but also stating that some of the information was still being worked on.

83. The last of the outstanding information was received on 29 November 2016.

Discussion

84. The appellant provided a chronology of the delays on HMRC's part up to September 2016. The copy emails included therein indicate (on 28 July 2016) that the accounts information was not readily available as they had had computer failures due to viruses and software corruption in the past. That email stated that there was no

point in undertaking work to produce the information and considered that HMRC were simply inventing issues that did not exist.

85. Considering the chronology and the information in the tribunal bundle further:

(1) On 15 August 2016, in response to the Schedule 36 Notice, the appellant stated that there was no justification for the Notice and complained that HMRC's actions in respect of the enquiry were not justified, and that the notice was disproportionate to the VAT liabilities and oppressive. They asked HMRC to withdraw the notice as they did not have the resources to continue complying with HMRC's requests.

(2) On 17 August 2016, the appellant wrote to say that they would provide the data by the end of September, although they considered that they were being victimised by the request.

(3) On 12 September 2016 the appellant had agreed in a telephone call to send the available material the next day and to comply substantially by 30 September 2016.

(4) No material was received by HMRC on 13 September 2016.

(5) On 19 September 2016, the appellant telephoned HMRC to explain that the "next lot of data" would be sent on 20 September 2016 and that the delays had been due to pressure of work, staff absence and not having internet access for two days.

(6) Some material was received by HMRC on 20 September 2016, but substantial compliance was not until two and half months later, towards the end of November 2016.

86. In the circumstances we do not consider that the appellant has established a reasonable excuse for the delays in complying with the Schedule 36 Notice: on 12 September 2016 they had agreed to provide some material the next day, but failed to provide any material until eight days later; they had agreed to provide all the material by the end of September but did not provide all that material until almost two months later. No explanation was given for that two month delay.

87. With regard to the appellant's complaints as to HMRC's conduct of the enquiry we note that we have no jurisdiction to deal with such complaints as this Tribunal has no free-standing ability to consider the question of proportionality in respect of penalties (per the Upper Tribunal decision in *Hok* [2012] UKUT 363 TC).

Conclusion

88. The appellant's appeal with regard to the standard-rating of the disconnection fees is upheld, although we find that such fees are exempt from VAT and not zero-rated as contended by the appellant.

89. The appellant's other appeals are dismissed.

90. 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.

ANNE FAIRPO

TRIBUNAL JUDGE
RELEASE DATE: 06 NOVEMBER 2020

APPENDIX 1 – matters appealed

VAT period:	Assessment in respect of:	Disputed VAT:	Assessment issued:
06/14	Removeable goods	£14,075.00	13/6/2016
	Disconnection fees	£600.00	12/3/2018
09/14	Removeable goods	£5,473.00	13/6/2016
	Disconnection fees	£600.00	12/3/2018
12/14	Removeable goods	£3,127.00	13/6/2016
	Disconnection fees	£600.00	12/3/2018
03/15	Removeable goods	£5,473.00	13/6/2016
	Disconnection fees	£600.00	12/3/2018
06/15	Removeable goods	£8,601.00	13/6/2016
	Disconnection fees	£600.00	12/3/2018
09/15	Removeable goods	£6,255.00	13/6/2016
	Disconnection fees	£200.00	12/3/2018
12/15	Removeable goods	£1,563.00	6/3/2018
	Disconnection fees	£500.00	6/3/2018
03/16	Disconnection fees	£1,100.00	6/3/2018
	Input tax disallowed	£3,406.00	6/3/2018
06/16	Removeable goods	£12,511.00	6/3/2018
	Partial exemption adjustment	£9,895.00	6/3/2018
	Disconnection fees	£600.00	6/3/2018
09/16	Removeable goods	£8,601.00	6/3/2018
	Disconnection fees	£600.00	6/3/2018
	Schedule 36 Initial Penalty	£300.00	15/9/2016
12/16	Removeable goods	£12,511.00	6/3/2018
	Disconnection fees	£600.00	6/3/2018
	Schedule 36 daily penalties	£2,450.00	14/11/2016
03/17	Removeable goods	£10,947.00	6/3/2018
	Disconnection fees	£600.00	6/3/2018
06/17	Partial exemption adjustment	£8,892.00	12/3/2018