



[2021] UKFTT 0089 (TC)

TC08071

VAT – striking out – whether transaction with a counterparty was a barter transaction – whether transaction gave rise to input tax credit – did appeal have reasonable prospects of success - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/04774

BETWEEN

MOVIEVENTURES LIMITED

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ALEKSANDER

The hearing took place on 25 March 2021. With the consent of the parties], the form of the hearing was /V (video) using the Tribunal's video hearing service attended by Mr Katz for the Appellant and Mrs Perrett for HMRC. A face-to-face hearing was not held because the Mr Katz was in the USA, and it was not practical for him to travel to a hearing in the UK given his health and the COVID-19 pandemic. The documents to which I was referred are a bundle of documents prepared by HMRC, supplemental documents provided by Mr Katz, and the skeleton arguments of the parties.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Martin Katz, a director, for the Appellant

Helena Perrett, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This hearing relates to an application by HMRC to strike out MovieVentures' appeal on the grounds that it has no reasonable prospect of success. MovieVentures was represented by Mr Katz, its director, and HMRC was represented by Mrs Perrett.

BACKGROUND FACTS

2. The background facts were somewhat confused, but it appears, from careful questioning of Mr Katz, I find that they are as follows.

3. BFS intended to produce a film. It entered into a contract with a Spanish company for the production of artwork. BFS borrowed from a third party to pay for the artwork.

4. For complex reasons, BFS could not continue with the production of the film, and it was decided that all rights relating to the film (including the artwork) would be acquired by MovieVentures.

5. MovieVentures acquired the artwork and all other rights relating to the film from BFS in 2011. The consideration provided by MovieVentures was the assumption of BFS's borrowings from the third party.

6. MovieVentures issued what it described as "Trade Credit Accounts" to BFS in respect of its acquisition.

7. Three invoices were issued by the Spanish company to BFS in respect of the artwork. The invoices refer to a contract signed on 3 August 2011. The invoices are as follows:

Date	Amount	VAT @ 20%	Total
3 August 2011	€88,743.45	€17,748.69	€106,492.14
24 October 2011	€103,534.02	€20,706.80	€124,240.82
24 October 2011	€103,534.02	€20,706.80	€124,240.82

8. Curiously, although these invoices are issued by a Spanish company and cite a Spanish VAT registration, the VAT is levied at 20% (the rate prevailing in the UK) and not 18% (the rate prevailing in Spain at the time). As these supplies are "business to business", it is also unclear why Spanish VAT was charged, given the EU rules on intra-community supplies at the time.

9. Two "Trade Credit Accounts" were issued by MovieVentures to BFS. Mr Katz describes these as "reverse invoices" representing the value given by MovieVentures to BFS. The Trade Credit Accounts are as follows:

Date	Amount	VAT @ 20%	Total
1 July 2016	£75,340.39	£15,068.08	£90,406.47
1 October 2016	£251,338.05	£50,403.27	£301,741.32

10. The Appellant submitted repayment VAT returns for periods 06/16 to 12/16. The amounts claimed were as follows:

Period	Amount claimed	Date filed
06/16	£22,388.89	31 July 2016
09/16	£12,509.00	31 October 2016
12/16	£35,465.64	31 January 2017

11. The amounts claimed for repayment correspond to the Sterling equivalent of the amounts shown on the Spanish company's VAT invoices. This makes sense, as BFS

borrowed the amounts invoiced from a third party. So the consideration given by MovieVentures for the film rights and artwork (the assumption of the loan) equalled the amount shown on the Spanish invoices.

12. The 09/16 claim was subject to a post-payment credibility check by HMRC – this is a check carried out after repayment has been made. The 12/16 claim was selected for a pre-payment credibility check.

13. The correspondence between HMRC and MovieVentures was confusing (both in relation to the credibility checks and the subsequent statutory review), and it is now clear that MovieVentures had misunderstood guidance it had seen on HMRC's website.

14. On 22 May 2017, HMRC disallowed the input tax claimed in respect of the transactions with BFS on the grounds that the documents provided by MovieVentures in support of the claim were not VAT invoices. HMRC also disallowed input tax claimed on other supplies.

15. On 20 June 2018, the decision to disallow the VAT shown on the transactions with BFS was upheld following a statutory review. But the review officer allowed the input tax claims for the other supplies.

16. The grounds given on review for the disallowance of the input tax on the BFS supplies were that

- (1) The supplies in question had not made to MovieVentures therefore it could not claim the VAT paid to the Spanish company as input tax; and
- (2) The claim was made outside the four-year time limit.

SUBMISSIONS OF THE PARTIES

17. At the hearing, Mr Katz explained that MovieVentures had not sought credit for input tax on the supplies made by the Spanish company to BPS. Rather MovieVentures had entered into a part-exchange/barter transaction with BPS, and was seeking a credit for the input tax arising on the part-exchange/barter.

18. Mr Katz described the part-exchange/barter transaction as (a) the transfer of the artwork and film rights by BPS to MovieVentures in exchange for (b) MovieVentures assuming the liability of BPS under the loan from the third party. From reading HMRC's manual and public notices, Mr Katz considered that this transaction was a part-exchange/barter, and that the tax point (time of supply) for this barter was when he entered the transaction in MovieVentures accounts (which was when the "Trade Credit Accounts" were issued).

19. As I explained to Mr Katz at the hearing, the transaction he described is neither a barter nor a part-exchange. A barter or part-exchange involves two transactions and therefore two supplies – a supply by A to B in consideration of a supply by B to A. Each supply gives rise separately to output tax for the supplier, and input tax for the customer in each case.

20. In this appeal there is only one supply, namely the supply by BFS of its artwork and film rights to MovieVentures. The assumption of the loan by MovieVentures is not a supply for VAT purposes.

21. I would make three further observations.

22. First, BFS was not registered for VAT at any time. The supply by BFS to MovieVentures of its artwork and film rights does not therefore give rise to any input tax in MovieVentures' hands. It follows that HMRC were correct to deny MovieVentures' claim for a refund of the purported input VAT.

23. Second, the tax point (time of supply) was at the time the artwork and film rights were transferred to MovieVentures or the time when MovieVentures assumed liability under the loan. This would have been in 2011, more than four years before MovieVentures claimed its input tax credit. So even if the supply by BFS had been a taxable supply, the claim by MovieVentures for the input tax credit was well out of time.

24. And finally, it would appear that some of the physical artwork was located in a number of different international jurisdictions at the time it was supplied to BFS. The place of supply of some of this artwork might well have been outside the UK. Fortunately, given my other findings, it is not necessary to unpick the different elements of the supply made by BFS to MovieVentures, to determine which elements give rise to VAT.

CONCLUSION

25. Rule 8(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that:

(3) The Tribunal may strike out the whole or a part of the proceedings if—

[...]

(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

26. Given the facts of this case, MovieVentures' appeal is bound to fail. I therefore strike it out as I consider that it has no reasonable prospects of success.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

27. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

RELEASE DATE: 30 MARCH 2021