



TC08255

Appeal number: TC/2018/05002

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**DECISION
ON AN APPLICATION FOR PERMISSION TO APPEAL
IN THE CASE OF**

CONSERVATORY ROOFING UK LIMITED **Appellant**

- and -

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

1. The appellant applies for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) released on 21 December 2020 (“the decision”).
2. The appellant’s appeal before the First-tier Tribunal was against HMRC’s decision to treat insulated roofing which the appellant supplied, as standard rated for Value Added Tax (“VAT”) purposes. As a result, HMRC reduced the appellant’s VAT credit claim for the period 01/18 to nil and issued an assessment for £13,457.96.
3. The question to be determined by the Tribunal was whether the appellant’s supply for VAT purposes was “insulation for roofs” within the meaning of Note 1(a) of Group 2 to Schedule 7A VAT Act 1994 (“VATA”) in which event the supplies would attract VAT at the reduced rate of 5%; or the construction or other alterations to a roofing or sealing system, in which event its supplies would attract VAT at the standard rate of 20%.
4. The supply provided by the appellant was variously described in its marketing material as a “roof replacement”, a “.. roof tile system which replaces the existing poly-carbonate or glass roof ..”, a “tiled conservatory roofing system” and a “new insulated lightweight conservatory roof”. Extensive works were undertaken both internally and externally prior to the application of insulation material to the underside of the pre-existing poly-carbonate roofing panel, which included the fitting of a frame over the existing roof, installing a waterproof membrane, with lightweight roofing tiles atop,

new soffits, guttering and rainwater goods. On the interior a new plasterboard ceiling was installed, together with electrics and lights.

5. The First-tier Tribunal reviewed the principles laid down in *Wetheralds Construction Limited v HMRC* [2018] UKUT 173 (TCC), where the Upper Tribunal considered whether similar (but not identical) construction works qualified as insulation for roofs within the meaning of Note 1a of Group 2 Schedule 7A VATA. The UTT confirmed that the approach taken in *Revenue & Customs Commissioners v Pinevale Limited* [2014] UKUT 204 was correct and that in such cases the characterisation of a supply should take account of all elements of the supply, while avoiding an unduly detailed dissection. Adopting the objective view of a typical customer, the First-tier Tribunal in *Wetheralds* concluded that the appellant's supply was effectively a thermally efficient replacement roof and not merely the supply of insulation and dismissed the appeal.

6. In *Wetheralds* J Berner said that if it is necessary to go further and examine whether there is a single supply containing various elements, the primary test to be applied in characterising a supply for VAT purposes is the 'predominance test' determined from the point of view of a typical customer as laid down by the CJEU in *Mesto Zanberk v Financcni Reditelstvi v Hradci Kralove* [2014] STC 1703,

7. In the appellant's application for permission to appeal to the Upper Tribunal it is argued that the First-tier Tribunal ("FtT") erred in law for two reasons:

(a) That its decision displays a lack of reasons, i.e. did not attain the standard of a properly and fully reasoned judgment which explained to the parties and anybody else reading it why the FtT reached the decision that it did,

and/or

(b) Alternatively and in any event, the FtT did not apply the test in *Mesto*; whilst acknowledging that the Tribunal set out the test correctly in its decision, it did not apply that test in its decision making process.

Ground (a) – lack of reasons

8. The appellant asserts that the FtT set out the appellant's argument in two very short paragraphs (paragraphs 24 and 25) and did not engage with the appellant's submissions, for example relating to the marketing material and also what a typical customer believed he or she was purchasing. The appellant also asserts that the FtT made no reference to the evidence of the appellant's director Mr Messenger, who gave evidence at the video link appeal and was cross-examined.

9. The appellant's grounds of appeal as stated in its initial Notice of Appeal dated 27 July 2018, are set out in paragraph 20 of the FtT's decision, in which it is clear that the appellant himself had not addressed the reasons why HMRC came to the conclusion that the supply and service provided by the appellant was a "replacement roof" which was chargeable at the standard rate of 20% VAT rather than solely "the installation of insulation" which would have been chargeable at the reduced rate of 5% VAT.

10. Furthermore, paragraphs 27 – 51 of the FtT's decision in which HMRC's submissions are summarised address the entirety of the appellant's grounds of appeal, including an analysis of the company's marketing material, the evidence of Mr

Messenger, which largely reiterated the assertions as set out in paragraph 30 of the FtT's decision and also a detailed consideration of the work carried out by the appellant when installing the new insulated roofing system.

11. The appellant asserts that the FtT did not engage with the appellant's arguments except possibly at paragraph 56 where it stated "the expressed purpose of the appellant's product is to provide insulation in cold weather and keep the conservatory cool in hot weather" and submits that the following sentence of paragraph 56 – "if only insulation material was supplied without installation of a timber, plaster boarded sub frame and tiles to the roof exterior, that purpose would not be achieved". The appellant asserts that this does not make sense to the appellant and does not explain why the appellant's statement (i.e. that the appellant's product provides insulation in cold weather and keeps the conservatory cool in hot weather) could not be correct. On a correct reading of paragraph 56 it can be seen that the FtT was not endeavouring to explain why the appellant's statement was incorrect; the FtT was stating that if only insulation material was supplied the appellant's product would not achieve the object of providing insulation in cold weather and keeping the conservatory cool in hot weather.

12. I do not therefore accept that the FtT did not engage with the appellant's submissions. The reasons why the Tribunal arrived at its conclusions is in my view adequately set out in the decision.

Ground (b) – the test in *Mesto*

13. It can be seen from the FtT's decision and its various references to *Mesto* that it accepted the predominant element of a supply must be ascertained from the view of a typical customer having regard to objective factors. The FtT correctly applied that test in arriving at its decision. The Tribunal decided at paragraph 53 that the supply provided by the appellant was an entirely new roofing system and also that if it was necessary to consider whether the supply was a single supply containing various elements, the *Mesto* predominance test should be applied.

14. I considered in accordance with Rule 40 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 whether to review the decision in this appeal ("the decision") but decided not to undertake a review as I was not satisfied that there was an error of law in the decision.

Decision

15. Permission to appeal to the Upper Tribunal is refused.

**MICHAEL CONNELL
TRIBUNAL JUDGE
RELEASE DATE: 26 MAY 2021**