



Neutral Citation: [2024] UKFTT 00339 (TC)

Case Number: TC09143

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2020/00281

VAT – input tax – assessments – whether sufficient evidence of supplies

Heard on: 16 January 2024
Judgment date: 18 April 2024

Before

**TRIBUNAL JUDGE MCGREGOR
JAMES ROBERTSON**

Between

BLOCK-AID LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Gary Brothers of Independent Tax & Forensic Services LLP

For the Respondents: Andrew Cameron, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was video via Tribunal video hearing system. A face to face hearing was not held because it was decided a remote hearing was appropriate. The documents to which we were referred are a bundle of 476 pages.

2. We also heard witness evidence from:

- (1) Mr Patrick Cassidy, director of the Appellant; and
- (2) Ms Linda Gilsmith, officer of HMRC.

Both were cross-examined.

3. 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.

PRELIMINARY ISSUE

4. There was a request from Mr Brothers to admit:

- (1) late evidence, in the form of photographs and documents to which Mr Cassidy referred in his oral evidence; and
- (2) an additional authority in the form of HMRC manual guidance.

5. At the hearing, following confirmation from the HMRC officer that the manual guidance being referred to was not within her knowledge because it related to direct tax rather than VAT, Mr Brothers withdrew that application.

6. In regards to the late evidence, HMRC objected to the lateness of the request in a matter that has been ongoing for several years and without HMRC having time to review.

7. As declared orally at the hearing, this request was refused on the basis that the evidence being proposed related to matters which had been in contention right from the beginning of the dispute and the evidence would have been easily available to the Appellant much earlier. It would not be in accordance with the fair course of proceedings to admit evidence, without warning, on the day of the hearing.

MATTERS IN DISPUTE

8. This is an appeal against VAT assessments relating to three VAT periods. Over the course of the dispute there have been small adjustments. The detail is set out in the following table:

VAT period	Original assessment	Amended assessment
09/17	£28,483	£27,108
12/17	£29,012	£29,012
03/18	£22,265	£22,265
Total	£79,760	£78,385

9. The assessments had originally included earlier periods. These were withdrawn due to being out of time.

10. All the VAT assessments related to disallowance of input VAT where the invoices had apparently been paid in cash.
11. The matter in dispute is whether HMRC were correct in disallowing the input tax.
12. It was accepted that the burden of proof of showing that the assessment was incorrect lies on the Appellant.

BACKGROUND FACTS

13. The following facts were not in dispute. We will make further findings of disputed fact later in the decision.
 - (1) The Appellant was registered for VAT at all relevant times;
 - (2) HMRC conducted a pre-arranged meeting at the Appellant's premises on 12 June 2018 to discuss the Appellant's VAT position;
 - (3) Over the course of June to September 2018, HMRC and the Appellant engaged in correspondence which involved a significant amount of information and documents being supplied to HMRC;
 - (4) In January 2019, the HMRC officer transferred the investigation to the fraud investigation service;
 - (5) In July 2019, a criminal fraud investigation was commenced;
 - (6) On 15 August 2019, Mr Cassidy was interviewed under caution by HMRC;
 - (7) No criminal charges were pursued;
 - (8) On 9 September 2019, HMRC issued a Notice of VAT assessment;
 - (9) On 4 November 2019, the Appellant requested a review of the decision;
 - (10) On 19 December 2019, HMRC issued a review conclusion letter upholding the assessment;
 - (11) On 15 January 2020, the Appellant submitted a notice of appeal to this Tribunal;
 - (12) Following a failed attempt at alternative dispute resolution, and a number of postponed hearings, the appeal proceeded towards the hearing held on 16 January 2024.

LAW

14. Section 24 of the VAT Act 1994 provides, so far as relevant:

“24(1) Subject to the following provisions of this section, “input tax” , in relation to a taxable person, means the following tax, that is to say–

 - (a)VAT on the supply to him of any goods or services; and

...

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.
15. Section 25 goes on to provide the obligation on a VAT registered trader to account for output tax and for credit for input tax, which is described as follows:

“25(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.
16. Section 26 then provides for which amounts are allowable as input tax:

26(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

26(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

(a) taxable supplies;

...”

17. Further requirements for making input tax claims are made in regulation 29 of the VAT Regulations 1995, which provides, so far as relevant to this appeal:

“29(1) Subject to paragraph (1A) below, and save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable save that, where he does not at that time hold the document or invoice required by paragraph (2) below, he shall make his claim on the return for the first prescribed accounting period in which he holds that document or invoice.

...

29(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of—

(a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;

...”

18. Regulation 13 provides, again as far as relevant:

“13(1) Save as otherwise provided in these Regulations, where a registered person (P)—

(a) makes a taxable supply in the United Kingdom to a taxable person, or

...

P must, unless paragraph (1ZA) applies, provide such persons as are mentioned above with a VAT invoice.

PARTIES ARGUMENTS

Appellant’s submissions

19. Ground 1: The assessment is incorrect as it does not relate to the underlying facts and evidence.

20. In support of this ground, the Appellant argues that:

- (1) there is sufficient evidence to support the input tax claim and that the evidence meets the satisfactory threshold for the input tax claim;
- (2) the Appellant meets both limbs of the legal test for input tax deduction, being:

- (a) there must have been a taxable supply of goods or services to the Appellant in the UK, which the Appellant intended to use for the purposes of their business, and
 - (b) the input tax is supported by appropriate documentary evidence, being either a VAT invoice or alternative evidence;
- (3) These tests are met because the Appellant has valid VAT invoices that clearly show the supplies being made to the Appellant, being lorry tyres, loads hauled, ground works carried out, and vehicles purchased. The Appellant stated in its skeleton argument that: “The Respondent does not plead that the supply did not take place.”
- (4) The requirement for alternative documentary evidence is only relevant if there is no VAT invoice, i.e. regulation 29 provides for them in the alternative, therefore there is no basis for HMRC to insist on seeing additional evidence;
- (5) Even if evidence is required, it is ample, in the form of:
- (a) Witness evidence from Mr Cassidy;
 - (b) A sworn witness statement from Mr Stringer;
 - (c) Bank payments made to the same suppliers, which HMRC does not seek to challenge.
21. Ground 2: The assessment is incorrect as it does not take account of the salient facts.
22. In support of this ground, the Appellant submits that in order to make out the assessment, HMRC must be asserting that there is insufficient evidence of the cash being paid and that the allegation must be that the invoices were false and a deception by misdescription to the fraud standard.
23. The Appellant submits that because the fraud investigation service decided not to pursue criminal charges, the only conclusion that can be inferred is that HMRC has already accepted that there is no falseness, misrepresentation or inaccuracy in the VAT invoices and cash transactions.
24. Ground 3: The assessment is incorrect as HMRC’s assertions are not made good, nor are they evidentially sound.
25. In support of this ground, the Appellant submits that:
- (1) Case law (in particular *Peng & Peng* [2020 UKFTT 07523], *Van Boeckel* [1981 HCEW STC 290], *Rahman Trading* [1998 HCEW STC 826]) provides that HMRC officers should guard against confusing a “ground for suspicion” with “evidence of suppression”.
 - (2) Officer had a ground of suspicion based on the cash hoard being used by the Appellant, but did not have evidence on which to reasonably base her assessment;
 - (3) With regard to the haulage invoices, the Appellant submits that there would not be any evidence of time sheets, routes driven or details of the journeys because Torrap Haulage Ltd (“Torrap”) was an introducer and not a haulage company and to provide the Appellant with the details of these loads would be to enable the Appellant to circumvent the introducer and go directly to the end user of the haulage services;
 - (4) With regard to the purchase of vehicles, the Appellant has provided DVLA evidence to show a transfer of a vehicle from the supplier to the Appellant;

(5) HMRC has included a number of other invoices in the assessments, being invoices for tyres from Torrap and six invoices related to supplies by a different supplier who supplied onsite security to the Appellant. HMRC has not raised any specific evidential concerns with these invoices;

(6) HMRC's assessment is therefore flawed.

HMRC submissions

26. In response to ground 1, HMRC relies on *Terra Baubedarf-Handel GmbH* 2005 STC 525, as authority for the assertion that there must be 2 conditions for the right to deduct to exist.

(1) The goods have been delivered or the services performed; and

(2) The taxable person holds the invoice or documents which may be considered to serve as an invoice.

27. HMRC contends that the invoices in dispute were all identified by the Appellant as having been paid in cash, but there has been no proof that this cash has ever been withdrawn from a bank, paid over and no alternative evidence has been provided (time sheets, routes driven, driver names, contracts, bank receipts etc) that prove the underlying services have ever been provided in line with Regulation 29 of the VAT Regulations 1995.

28. HMRC also contends that no due diligence appears to have been undertaken on Torrap, who make up the majority, but not all, of the disallowed invoices and that it is not credible that no business and accounting records, aside from invoices, have been produced to support the cash transactions (exceeding £550,000).

29. Since business records must be kept for 6 years in line with Paragraph 6 (3) of Schedule 11 of the VAT Act 1994, the Appellant should have been able to provide evidence of them at the time they were requested.

30. Put simply, HMRC contend that the Appellant has failed to provide evidence that the underlying services have been performed.

31. HMRC submit that the VAT assessment has been calculated on invoices provided by the Appellant and as been made to best judgment.

32. With regards to ground 2, HMRC do not accept that the fact that the fraud investigation service referred the case back to Officer Gilsmith is evidence that anyone in HMRC accepted that the transactions were bona fide.

33. HMRC regularly work cases to a civil standard after a FIS referral has been made and this is not a remotely uncommon or unusual event. This is to enable HMRC to work cases efficiently and minimise the cost to the public purse.

34. HMRC also contend that the pattern of repayment VAT returns which the Appellant submitted when there were a large number of cash transactions apparently paid to Torrap does not reflect a credible business in the sector, nor Torrap's own pattern of being a payment trader both prior to and after the periods in question.

35. As such, HMRC contend the VAT Assessments are legally and technically correct and that Officer Gilsmith has, in fact, considered all the salient facts.

36. In response to ground 3, HMRC dispute the assertion that there is no more than a ground of suspicion. HMRC submit that no evidence has been produced to support the underlying transactions and the absence of a criminal prosecution is not confirmation that the evidential basis for the assessments is unsound.

37. With regards to the Appellant's reliance on *Peng & Peng*, HMRC note that the Appellant in that case discharged the burden of providing the VAT assessments were not to best judgment, but the Appellant in this appeal has not done so.

DISCUSSION

38. Before we consider the disputed factual position, it is helpful first to establish what the legal test is we need to consider.

39. Both parties agree that section 25 – 26 of VATA 1995 and regulation 29 of the VAT Regulations are our source of law for this decision.

40. Mr Brothers focused very heavily on the argument that HMRC were wrong to conclude that they needed or were entitled to more evidence than an invoice. He argued that neither regulation 29 nor the case law supported that contention.

41. As set out above, the law on input tax deduction starts in section 25, which allows a trader such as the Appellant credit for "so much of his input tax as is allowable under section 26". The amount of that credit is then determined in section 26 as "so much of the input tax for the period (that is input tax on supplies and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below". Regulation 29(2) then provides, in the context of taxable supplies within the UK, that the condition to be met is that there is a valid VAT invoice.

42. Mr Brothers argued that the cases that deal with HMRC's exercise of discretion to allow evidence of something other than an invoice, including *FI Promotions* [2010] UKFTT 159 (TC), are dealing with an entirely different set of circumstances to the one at hand. In those cases, there was no VAT invoice, therefore the trader needed to be able to rely on something else.

43. Finally Mr Brothers asserted, as set out above, that HMRC were not arguing that the supplies had not in fact been made. In fact he invited us to infer that HMRC could not raise that argument because the fraud investigation service had referred the case back to Officer Gilsmith and therefore must have accepted that the supplies were in fact made.

44. We disagree with this assertion. We note that:

(1) The original Notice of assessment used the following phrase "we don't think that the cash transactions with Torrap Haulage Ltd took place as you have presented them to HMRC."

(2) The review conclusion letter states: "You have not provided any evidence such as time sheets, route driven, contracts, payment agreement or details of the journeys to evidence that *supplies were received*." (emphasis added by the Tribunal);

(3) The Statement of Case states: "The Respondents note that despite numerous requests, the Appellant has been unable to provide any documentation to support the assertion that supplies were made.";

(4) HMRC's skeleton argument expressly states that the "Appellant has failed to provide evidence that the underlying services have been performed"; and

(5) The question of whether stamping "paid with cash" on an invoice was evidence that supplies had actually taken place was put to Mr Cassidy in cross-examination at the hearing.

45. HMRC's position has been very clear from the outset that the source of the challenge is, or at least includes, the assertion that the supplies reported on the identified invoices were not in fact made to the Appellant.

46. While we agree with the Appellant that this is not a circumstance where a taxpayer is seeking to rely on alternative evidence because they do not have a VAT invoice, we do not agree that this prevents HMRC from arguing that a taxpayer needs to show evidence in addition to an invoice that supports the conclusion that a supply has been made.

47. The wording in section 26 of VATA 1994 is very clear that there must be a supply to the trader before an input tax credit can even be contemplated. The dispute is not about the invoice, but centres on an earlier stage in input tax deduction – was there a supply?

48. Having reached that conclusion on the law, we must now address the question of whether the evidence presented to us is sufficient to discharge the Appellant’s burden of proof, on the balance of probabilities, that the supplies had been made and therefore the Assessment is wrong.

49. There were five different categories of invoice:

- (1) invoices from Torrap that related to haulage;
- (2) invoices from Torrap that related to tyres;
- (3) invoices from Torrap that related to grounds works and fencing; and
- (4) invoices from Torrap that related to vehicles; and
- (5) invoices from Gauntlet that related to security.

50. We heard evidence from Mr Cassidy on all five types of invoice. He was thoroughly cross-examined.

Haulage invoices

51. Mr Cassidy’s evidence was that Torrap was an “introducer” in the haulage industry. Torrap, which was owned by a Mr Tapley, had connections with the large commercial haulage companies and could make introductions to those large companies, including a specific company, which we will call ABC PLC for the purposes of this decision as there is no need to name them specifically. Mr Cassidy said that he had been introduced to Torrap by two family friends, Mr Stringer and Mr Langstaff. Mr Cassidy said that he did not deal directly with Torrap, but rather through the intermediation of Mr Langstaff and Mr Stringer because they were known to Torrap and could therefore get a better deal.

52. Mr Cassidy said that he wanted Block-Aid Limited to be on Torrap’s list of haulage providers who Torrap used when they source haulage providers for their large end user clients, like ABC PLC, because this would help him break in to a notoriously difficult but lucrative market. In his witness statement, Mr Cassidy stated “I took the commercial decision that the opportunity of paying Torrap for such introductions and opportunities, at Block-aid’s expense, was a worthwhile speculative investment in order to try win contracts later down the line.”

53. He went on to say “it was presented to me that to secure [ABC PLC’s] favour and to create a working relationship, that, in effect, Block-aid paid [ABC PLC’s] haulage bill for the haulage services secured and provided by Torrap. This was unusual but allowed Block-aid to build trust and credibility with [ABC PLC] for the award of later contracts.”

54. The invoices relating to haulage were (subject to the comment below) set out as in the following example:

Carry out works at your sites – Product Transport, between 28/07/2017 and 31/07/2017

SCHEME NAME	AREA	STREET NAME	COMMENTS
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Hare Edge	Barlow	Unnamed Road .	19 Loads@ £280 per load= £5,320
Drum Hill	Long Eaton	Wilmott Street	23 Loads @ £280 per load = £6,440
Total No. of Loads	42	£280 per load	£ 11,760.00
		20% VAT	£ 2,352.00
		Total Payable	£14,112.00

55. In cross-examination, Mr Cassidy was asked what Torrap was actually doing for the sums it received. Mr Cassidy said that they were delivering loads and were getting paid twice. When asked again whether Torrap were doing the haulage work and he confirmed that they were.

56. The course of a dealing was presented as follows:

- (1) Mr Cassidy would meet with Mr Stringer or Mr Langstaff, who would explain what work Torrap needed doing for ABC PLC;
- (2) Block-aid Ltd would then perform the haulage work for ABC PLC;
- (3) Torrap would invoice Block-aid Ltd for the work;
- (4) Block-aid Ltd would pay Torrap's invoice, usually in cash.

57. Mr Cassidy said that the speculation had worked and exhibited a contract between the Appellant and ABC PLC that had been entered into in May 2018.

58. Although we have set out above a "standard form" invoice for the haulage work, we also note that a number of haulage invoices which refer to loads and locations as set out above, were actually inputted into invoices clearly designed for the sale of tyres as follows:

Carry out works at your sites – Product transport, between 10/02/2018 and 12/02/2018

CUSTOMER	TYRE MAKE	SPECIFICATION	COMMENTS
Hare Edge	Barlow	Unnamed Road	19 Loads@ £295 per load= £5,605
Drum Hill	Long Eaton	Wilmott Street	13 Loads @ £295 per load = £3,835
Total No. of Loads	32	£295 per load	£ 9,440.00
		20% VAT	£ 1,888.00
		Total Payable	£11,328.00

59. We also heard evidence from Mr Cassidy about the fact that these invoices were paid in cash.

60. Mr Cassidy's evidence was that he had taken over the business from his father in 2014 after his father died and that he had "walked into a cash problem". The cash problem was that there was a large amount of cash stored in his father's house. He explained that he had come back to run his father's business after working in international medical sales and he understood that having this volume of cash was not a good idea and therefore he wanted to use it up as quickly as possible.

61. He said that his father had gifted him the cash in 2005 but that it had remained in his father's house until he died. It was stored there in a safe and the house had good security, including guard dogs. He said that the reason his father had accumulated such a large amount of cash was because he did not trust the banks.

62. When asked how the cash accumulated over a long period remained in legal circulation, Mr Cassidy said that his father must have taken the old notes to the bank to swap them from legal tender.

63. With regards to how the cash was paid to Torrap, Mr Cassidy gave evidence that the cash was collected from BAL's premises by Mr Langstaff for Torrap. He exhibited a witness statement given by Mr Stringer which he says was made "for HMRC" "as part of HMRC's investigation into Block-aid". This statement:

(1) was dated 5 November 2020;

(2) Is stated to be "in the matter of HMRC investigation into the limited company Blockaid Ltd";

(3) Was signed by Mr Stringer in the presence of a solicitor from Mary Monson Solicitors Limited, who signed the statement.

64. Mr Stringer's evidence was that he acted as Mr Langstaff's driver. He describes that for the period of December 2016 through to December 2018, he drove Mr Langstaff to BAL's premises fortnightly on a Saturday and witnessed the collection of between £8,000 and £15,000 in cash per visit for payment in relation to either tyres purchased or for works done by Torrap on Block-aid's instruction.

65. Mr Stringer was not called to give evidence at the hearing before us. When asked why not, Mr Cassidy said that he wasn't requested to call Mr Stringer but that he would have come if he had asked.

66. There were a great many inconsistencies and confusions in the evidence presented to us from Mr Cassidy.

67. He accepted that the business relationship he was presenting between Torrap and BAL was an unusual one which resulted in Torrap being paid twice.

68. However, the strangeness of the relationship potentially goes further than that if BAL were actually doing the haulage work. If that is correct, Torrap is:

(1) being paid by ABC PLC to arrange movement of loads;

(2) being paid by BAL, apparently for the "introduction services" albeit that the invoices were labelled as haulage work; and

(3) not actually doing any of the work itself because BAL is actually performing the haulage services that ABC PLC requires.

69. Mr Cassidy's evidence was inconsistent regarding who was actually doing the haulage work.

70. The formulation of the invoices is also odd. The wording used of “Carry out works at your sites – Product transport” adds to the confusion. When a person X supplies services to person Y, the normal course of events would be for X to invoice Y. In that context, “carrying out works at *your* sites” would suggest that the “you” is Y – i.e. the recipient of the supply. If Torrap is invoicing BAL for “carrying out works at your sites” this implies Torrap is carrying out work at BAL’s sites. This is not consistent with the majority of the descriptions given by Mr Cassidy, which were that BAL was doing the haulage.

71. If BAL was actually paying for the services of intermediation or introduction, there would be no need for the invoices to refer to the haulage at all, they could simply refer to the services of introduction to large haulage clients.

72. We had no evidence before us, other than the invoices themselves, of the individual pieces of work. Mr Cassidy asked, when challenged on the absence of any evidence in support of the existence of the supplies “ what else can we do?”.

73. Mr Brothers further submitted that it would have been contrary to the position of Torrap as an introducer to provide details of the routes etc as this would be giving away their information that secured their position as middleman. We do not accept this assertion – if BAL had been providing staff and lorries to move loads from destination A to destination B, it would have been BAL’s records that could have shown the activities undertaken. Torrap would not have been required to produce any confidential information.

74. HMRC suggested BAL could have put forward evidence of time sheets of staff who were performing the work or the routes that the trucks took. Witness evidence could have been adduced from drivers or from ABC PLC but none was sought.

75. The only third-party evidence presented was the witness statement from Mr Stringer, which is hearsay because he was not called and therefore could not be cross-examined. Within the Tribunal procedure rules we may admit it as evidence, but the fact he was not called can affect its weight.

76. Mr Brothers invited us to give it weight because HMRC had not challenged the evidence in earlier correspondence or at the hearing. However, if the Appellant wished to rely on Mr Stringer’s evidence, he should have been invited to give evidence orally and be cross-examined. HMRC’s time to challenge the witness would have been in cross-examination at the hearing, but he was not present.

77. The witness statement was, we assume, given in the context of this appeal (rather than the criminal investigation) because of its date – it was made after the criminal investigation had completed and after the appeal had been made to this Tribunal, but the Appellant still elected not to call Mr Stringer.

78. In any event, Mr Stringer’s evidence concerned mainly the question of payments in cash, rather than the supplies being made. It does refer to services being supplied by Torrap but does not expand on the nature of the services. We therefore do not take anything from Mr Stringer’s evidence in relation to the nature of the supplies.

79. We find that BAL has not provided evidence to support what the supplies being made to BAL were. The witness evidence conflicted with the invoice evidence and the explanation given did not make sense. BAL had had ample opportunity to present evidence that supported either the content of the invoices or the intermediation arrangement that was described in witness evidence, but did neither.

Supply of tyres

80. A number of the disputed invoices related to the supply of tyres by Torrap to BAL.

81. Mr Cassidy's evidence was that Torrap used white vans to deliver 6 to 8 tyres at a time to BAL's premises. We note that the statement that Torrap had white vans and drivers at its disposal to deliver tyres is contrary to the statements made regarding the fact that Torrap was only an intermediation business and therefore did not have a yard from which to operate.

82. He said that BAL also used other tyre companies, but that Torrap was able to obtain favourable prices and so BAL mainly used Torrap.

83. Mr Cassidy said that each truck had 12 tyres and each tyre lasted approximately 3 – 4 months. The number of trucks being operated by BAL at that time was not clear or evidenced. My Cassidy stated that BAL was regularly acquiring new trucks, going from 4 trucks when he took over in 2014 to 48 trucks in 2024 and that by 2017-18, he thought they had about 25 trucks. In 2021 when he prepared his witness statement, he stated that, at that time, BAL had 13 trucks working exclusively for ABC PLC under the contract that was signed with them in May 2018.

84. Officer Gilsmith's notes of the visit in June 2018 include a statement made during that visit that the company was operating 18 trucks.

85. We therefore find that BAL was operating fewer than 18 trucks during the period in question (July 2017 to March 2018).

86. The invoices showed the delivery of 289 tyres supplied, fairly evenly, over a 9 month period from July 2017 to March 2018, amounting to well over £100,000 of gross supplies.

87. When pressed as to whether BAL used all of these tyres over that period, Mr Cassidy stated that BAL probably didn't. They usually had a good set of tyres that they switched onto trucks for the purposes of MOTs and another spare set, but they also exchanged and horse-traded tyres with other companies, for cash.

88. Other than in response to questions in oral evidence, BAL has produced no evidence at all of the supply of tyres, subsequent sales of tyres or the regularity with which tyres are replaced. Therefore we have no independent means of cross-checking that position.

89. Mr Cassidy suggested during his cross examination that he could provide further detail of the truck acquisitions over the relevant periods if it was required.

90. BAL has had several years during this investigation and tribunal appeal in which to present evidence that shows that the tyres were supplied by Torrap to BAL but has not done so.

Ground works

91. There were 2 invoices that showed ground works and fencing being carried out at BAL premises. They amounted to approximately £20,000 and, again, were apparently paid in cash.

92. When pressed in oral evidence, Mr Cassidy said that Torrap had a number of people who did this kind of work and he was trying to get through the cash as quickly as possible, so he used them to do some basic works regarding restoring fences, rebuilding walls etc at BAL's premises.

93. We note that this contradicts the evidence that Torrap was purely an intermediation service between haulage companies.

94. Again, we saw no other evidence to support the delivery of these services, such as photographs of the work done or evidence from the individuals who carried out the work. Again, until the oral cross-examination at the hearing, nothing had been stated or submitted regarding the works that had been done.

Vehicles

95. There were three invoices that related to the transfer of vehicles from Torrap to BAL.
96. In relation to one of the invoices, BAL had provided a V5C transfer, as well as a bank statement and a cheque showing the payment for the vehicle.
97. For the other two invoices, BAL had provided V5C transfers, but not information regarding the payments.
98. Mr Cassidy's evidence was that the vehicles were bought by BAL from Torrap.
99. We find that the V5C certificates do show the transfer of ownership from Torrap to BAL which matches the invoices given.

Security

100. The final set of invoices related to security services provided by Gauntlet Security. All invoices related to period for October 2017 to March 2018.
101. Mr Cassidy's witness statement had highlighted that some of the invoices related not to Torrap but to Gauntlet. At the hearing, he reiterated that he had thought the assessment related exclusively to Torrap, so he thought it was a mistake that the Gauntlet invoices were included.
102. The visit record prepared by Officer Gilsmith following her visit to BAL refers to a conversation about the Gauntlet Security invoices. Follow up questions were asked and further information provided by BAL.
103. Therefore we find that, following the initial visit, BAL were aware that the Gauntlet security invoices were included in the investigation.
104. However, the Notice of Assessment refers specifically, and only, to Torrap. Likewise, although the Gauntlet invoices were included in the list of invoices, they were not identified other than by invoice amount and date and the heading of the list of invoices again refers specifically, and only, to Torrap.
105. Therefore BAL would have been reasonable in their assumption at that point, that the assessment related to Torrap invoices only.
106. However, since Mr Cassidy prepared his witness statement in 2021 and identified that the Gauntlet security invoices were included in the list of disputed invoices, that position cannot have persisted after that point.
107. The invoices referred to the supply of 2 men for 8 hours over 7 days providing security services at BAL's premises.
108. Again, it would have been possible for BAL to provide evidence to support the existence of these supplies, for example witness evidence from the security guards provided or from Gauntlet themselves, but none was provided.

Decision on Ground 1

109. We have already noted above our conclusion on the law as to what tests must be met. Therefore, we must decide whether we consider that the evidence we have been presented with regarding these invoices is enough to overturn HMRC's assessment that the supplies did not take place.
110. With regard to the vehicles, we find that BAL has provided sufficient evidence to displace HMRC's assessment that the supplies did not take place. As a result, the input tax on the vehicles is allowed.

111. With regard to the haulage services, tyres, ground works and security services, we find that BAL has not discharged its burden of providing sufficient evidence to displace HMRC's assessment that the supplies did not take place and the input tax should not be allowed.

Decision on Ground 2

112. Mr Brothers submitted that if HMRC are seeking to challenge the existence of the supply, they must be asserting fraud, which would be contrary to the conclusions of the fraud investigation service, who had decided not to pursue criminal prosecution. Pursuing the civil assessment of VAT on the basis that the supplies did not happen or the cash was not paid fails to take into account the outcome of the fraud investigation.

113. We do not find the Appellant's submission persuasive.

114. A decision by HMRC's fraud investigation service not to pursue a criminal prosecution cannot, in and of itself, be treated as a decision from HMRC as a body that there were no further questions to answer about the making of supplies.

115. A decision as to whether to pursue criminal prosecution is an internal decision of that part of HMRC of which we have no evidence. In our view it is a step too far for us to infer that this decision was because they had concluded that the supplies had been made. The only inference we can make is that they concluded that it was not in their interests to pursue a criminal prosecution. This may have been because they did not have enough evidence to support a prosecution to a criminal standard of proof or it may have been because of other internal decision making driven by policy or resourcing. We simply don't know and cannot infer which of those possible reasons, or indeed any others, drove the decision.

116. In our view, ground 2 is not made out.

Decision on Ground 3

117. It was clear from the correspondence and the evidence from officer Gilsmith, that the large payments in cash were definitely a source of concern for HMRC and one of the reasons why the investigation continued.

118. However, we do not consider that this was only a ground for suspicion, nor that it was the only ground for suspicion. Officer Gilsmith's evidence was clear that the other ground for suspicion was the fact that BAL had switched from being a payment trader to being a consistent repayment trader for a number of quarters and that this was not usual in the trade in which BAL operates, nor was it usual for BAL by comparison to the periods before and after her investigation.

119. BAL's submission is correct that HMRC cannot simply raise an assessment because they have a ground for suspicion.

120. However, we agree with HMRC that their position went further than a ground of suspicion. Following the visit to BAL's premises, HMRC requested further information and evidence. While invoices were forthcoming, other than in respect of the vehicles as set out above, no further evidence was provided in relation to any of the other invoices. It was this absence of evidence that turned a suspicion into a basis for assessment.

121. BAL are also correct that it is possible to displace the assessment, as in the case of Peng, but as we have found above, other than in respect of the vehicles, BAL has failed to discharge the burden of displacing HMRC's assessments.

DISPOSITION

122. For the reasons set out above, we uphold the assessments other than in relation to the vehicles, which reduces the assessments by £13,775.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

123. 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.

**ABIGAIL MCGREGOR
TRIBUNAL JUDGE**

Release date: 18th APRIL 2024