Neutral Citation: [2024] UKFTT 00997 (TC)

Case Number: TC09345

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal Reference: TC/2022/11576
TC/2023/00414

Stamp Duty Land Tax, recovery of invalid MDR claim paid on provisional basis under para.6, sched.11A FA 2003, did timing of assessment satisfy requirements of para.13, schedule 11A if issued on or prior to date of Closure Notice? Yes – assessment valid and appeal dismissed

Heard on: 7-8 December 2023
Judgment date: 30 October 2024

Before

JUDGE VIMAL TILAKAPALA
TRIBUNAL MEMBER JAMES ROBERTSON

Between

THE WOOL HOUSE LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Patrick Cannon of Counsel, instructed by the Appellant

For the Respondents: Varuna Jeewon litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an appeal in respect of;

   (1) a closure notice (the "Closure Notice") issued on 12 January 2022 under para.11, sched.11A, Finance Act 2003 ("FA 03"); and

   (2) a notice of assessment (the "Notice of Assessment") issued on 6 January 2023 under para.29, sched.10, FA 03.

2. The Closure Notice and Notice of Assessment relate to the recovery of SDLT repaid to the Appellant in respect of a claim for multiple dwellings relief ("MDR") under s.58D and sched.6B, FA 03 which was ultimately determined to have been made out of time. The claim related to the purchase of a property at 32 Silver Street, Bradford on Avon, Wiltshire, BA15 1JX (the "Property").

3. We had a hearing bundle of 144 pages, skeleton arguments from the Appellant and HMRC and an authorities bundle. We heard evidence from HMRC officer Ms Corrine Lutzuver and from Ms Joanna Ellis, a director of the Appellant.

4. All statutory references in the judgment are, unless otherwise specified, references to FA 03 which is where the material legislative provisions relevant to this appeal are to be found.

THE BACKGROUND AND RELEVANT FACTS

5. On 30 August 2019 the Appellant purchased the Property for £500,000.

6. On 13 January 2021 the Appellant wrote to HMRC outlining that it had overpaid SDLT on the basis that MDR was available for the Property but had not been claimed. The Appellant said that it was due a rebate of £13,566.34.

7. On 25 Jan 2021 HMRC wrote to the Appellant requesting copies of the purchase contract and Form TR1. The Appellant provided these on 2 February 2021.

8. On 22 February HMRC (Officer Overington) wrote to the Appellant asking for further information and confirmation of the SDLT provisions under which the rebate was claimed.

9. On 10 March 2021 the Appellant wrote to HMRC providing further information and documents and made a claim for overpayment relief under para.34, sched.10 in respect of the purchase of the Property on the basis that the original SDLT calculation did not take into account MDR. This date was accepted as the date on which the overpayment relief claim was made.

10. On 28 October 2021 HMRC (Officer Lutzuver) wrote to the Appellant opening a check into the overpayment relief claim under para.7, sched.11A.

11. This letter said that the relief should, pursuant to sched.6B and s.58D(2) have been claimed in a land transaction return or an amendment of such a return. It outlined that para.6, sched.6B provided that an amendment of a return had to be made within 12 months of the filing date of the return and as the filing date for the return was 14 days after acquisition of the Property, the latest date on which an amendment to the Appellant's return could be made was 13 September 2020.

12. Accordingly, Ms Lutzuver informed the Appellant that HMRC were not liable to give effect to the claim. This was because it fell within one of the circumstances listed in para.34A(2), sched.10 of where excessive amounts paid would not be refundable – the

circumstance in this case being as per para.34A(2)(b) - a mistake consisting of failing to make a claim.

13. On 7 January 2022 a refund of £13,567 plus interest of £159.64 was processed in respect of the Appellant's claim. This was a consequence of HMRC's practice of paying relief claims before processing and verifying the claim details.

14. On 11 January 2022 HMRC (Officer Lutzuver) raised an assessment charge of £13,567 and an interest charge of £159.64 by entering them into HMRC's internal computer systems.

15. On the same date Officer Lutzuver "executed" a Closure Notice under para. 11, sched. 11A. Although the Closure Notice and assessment were entered into the system on the same day (11 January 2022), HMRC's internal system post-dated the Closure Notice and posted it to the Appellant on 12 January 2022.

The Closure Notice

16. The Closure Notice outlined HMRC's findings as set out in its letter of 28 October 2021.

17. In the "What you need to do now" section, Officer Lutzuver wrote:

> "I understand a refund of £13,567.00 plus interest of £159.64 has been processed. This was an error as explained above, no refund is due, I apologise for this mistake.
>
> The total amount due as a result of my check is £13,738.64. This includes SDLT of £13,567.00 and interest of £12.00 (calculated to 24 January 2022). The amount also includes the repayment supplement of £159.64 which was included with your refund."

18. On 13 April 2022 the Appellant wrote to HMRC stating the following:

> "… under paragraph 13 Schedule 11A FA 2003, where HMRC consider that no repayment is due, HMRC is required to make such adjustment to my overpayment claim as may be necessary by the issue [of] an assessment on me and that such an assessment will be out of time if it is made more than 30 days after the issue of the closure notice …
>
> … Could you therefore please let me know on what basis you believe that HMRC has the power to require me to repay the monies that I received?"

19. On 25 April 2022 Officer Lutzuver wrote to the Appellant stating that:

> "the closure notice itself provided details of the assessment".

20. On 19 May 2022 the Appellant wrote to HMRC noting that the statutory wording distinguished between a closure notice and assessment, and stating the following:

> "If the two things can be combined in the closure notice why does the statutory provision distinguish the two and given the ease with which HMRC could have issued me with an assessment within 30 days of the closure notice or at least stated in the closure notice or in a covering letter that the closure notice was also the assessment, why did you not do so?"

21. The Appellant asked HMRC to reconsider their position and consider whether the SDLT refund was not repayable.

22. On 8 June 2022 HMRC (Officer Lutzuver) wrote to the Appellant reaffirming HMRC's position set out in the letter of 25 April 2022 and stating that they considered the enquiry closed.

23. On 22 June 2022 the Appellant provided their Notice of Appeal to the Tribunal. In that notice of appeal they maintained their position that the Closure Notice was not an assessment.

24. On 6 January 2023 HMRC (Officer Lutzuver) issued the Notice of Assessment under para. 29 sched. 10 requesting the amount due of £13,726.64. This stated that it was:

> "only intended to take effect should the tribunal find that the closure notice dated 12 January 2022 does not, on its own, also function as a valid assessment."

25. On 27 January 2023 the Appellant submitted a Notice of Appeal to the Tribunal in respect of the Notice of Assessment. This set out the Appellant's contention that HMRC were unable to issue the assessment given the restrictions contained in para 30, sched.10.

The Witness evidence

Corinne Lutzuver

26. Ms Lutzuver has been an HMRC officer for 26 years and a compliance officer for the SDLT compliance team since June 2017.

27. She opened the check into the Appellant's MDR claim and determined that the relief was not available as it could only be claimed in a return or an amendment to such a return and had to be claimed within 12 months of the filing date of the return. She explained the position to the Appellant in her letter of 27 October 2021 and advised the Appellant that if it disagreed it should write to her within 30 days with further representations.

28. After receiving no response from the Appellant, she took the decision to issue the Closure Notice.

29. The Closure Notice was issued and the assessment underpinning it was raised at the same time by Ms Lutzuver, each by entry into the HMRC computer system.

30. The internal computer systems for raising the assessment and issuing the Closure Notice were different:

(1) the closure notice system required the HMRC officer to draft the closure notice, which was then submitted to the internal electronic postal system which would process the request overnight, automatically add the following day's date to it and it would then be posted to the taxpayer.

(2) the assessment charge was raised on a different internal HMRC system. This system was in effect an audit trail which recorded all of the matters and charges applied to a taxpayer's account.

31. Ms Lutzuver drafted the Closure Notice and entered it into the system on 11 January 2022, the system then automatically dated this the next day - 12 January 2022, which was the date on which it was posted to the Appellant. A screen shot of this entry was included in the hearing bundle.

32. Ms Lutzuver also entered the assessments for the SDLT charge and interest for the Appellant's account into the system on 11 January 2002. A screen shot was included in the hearing bundle of a page headed "Account Display: Basic List" for The Wool House Ltd which contained several columns, including one headed "charge ref". and one headed "charge type". On the "charge type" column entries headed "SDLT Assessment Char[ge] and "SDLT Interest" were shown. A net "receivable" was shown of £13,567 – being the total of the SDLT interest and assessment charge.

33. The standard approach for SDLT refunds during Ms Lutzuver's time in the SDLT compliance team was for HMRC to process relief claims immediately and to check them subsequently. She said that legislation allowed HMRC to do so and HMRC had 9 months to check the position after the payments had been made. HMRC's guidance also made clear the fact that relief was given on a provisional basis and could be clawed back.

The Closure Notice

34. Ms Lutzuver pointed out that the Closure Notice referred to the applicable legislation, explained how and why her decision was reached and gave details of how much SDLT was due and how it could be paid.

35. She acknowledged that the term "assessment" was not used in the Closure Notice – but emphasised her view that it made clear that additional tax was due. She also stated that there would ordinarily be no letter headed "assessment" – the Closure Notice would be treated as incorporating a notice of the assessment.

Joanna Ellis

36. Ms Ellis is a director and shareholder of the Appellant.

37. Ms Ellis is used to dealing with HMRC, although she had no previous experience of dealing with HMRC in relation to SDLT.

38. In Ms Ellis' experience, when tax was payable, she would usually receive a notification from HMRC together with a "slip" showing how much she needed to pay to HMRC. She expected the procedure to be similar in relation to SDLT.

39. Ms Ellis did not consider the Closure Notice to be an "assessment" as it was not described as an assessment, nor did it enclose a slip for payment as had been the case in respect of previous notifications by HMRC of a tax liability.

40. Ms Ellis was of the view that a closure notice and an assessment were two separate items. She did not understand that a Closure Notice could also be an assessment. In her view it could not reasonably be interpreted by an ordinary recipient as also functioning as an assessment without a notice explaining that it was intended to do so.

41. Ms Ellis' confusion was compounded by the fact that a refund had been received and HMRC was asking for that refund to be repaid.

42. Ms Ellis called HMRC twice (on 8/9/21 and 26/10/21) to check on the position but did not manage to get through to anyone that could assist and the advisors that she spoke to did not call her back.

43. Ms Elliss agreed that the Closure Notice was correctly addressed. She also agreed that the "What you need to do now" section made clear that it referred to two sums.

The content of the Closure Notice

44. The key parts of the Closure Notice were as follows:

(1) In the introductory section:

> "I have now completed my check into your claim for overpaid Stamp Duty Land Tax (SDLT) for the above acquisition This letter is a Closure Notice issued under Paragraph 11, Schedule 11A of the Finance Act 2003"

(2) In the main body headed "My Conclusion":

"My conclusion is in line with my findings as set in my letter to you dated 28 October 2021.

This section also contained a technical analysis including reference to the legislation in FA 03 under which the claim was made and refused and relevant case law. It concluded:

"As a claim for Multiple Dwellings Relief must be made in a return or an amendment of such a return, you made a mistake consisting of failing to make a claim, Therefore HMRC are not liable to give effect to your claim."

(3) In the section headed "What you need to do now":

"I understand a refund of £13,567.00 plus interest of £159.64 has been processed. This was an error as, explained above, no refund is due. I apologise for the mistake.

The total amount now due as a result of my check is £13,738.64. This includes SDLT of £13,567.00 and interest of £12.00 (calculated to 24 January 2022)."

(4) In the paragraph headed "How to pay":

"We recommend that you make all your payments to us electronically, You can find more information about all the ways to pay online, go to www.gov.uk/pay-stamp-duty-land-tax. If you need to pay by post, please send a cheque to;

HM Revenue and Customs

Direct

BX5 5BD

Please make your cheque payable to 'HM Revenue & Customs', followed by […] which is your Unique Transaction Reference Number (UTRN)."

(5) In the section headed "What to do if you disagree":

"If you disagree with my decision, you can appeal. You need to write to me within 30 days of the date on this letter, providing full details of your grounds of appeal alongside evidence to support your view.

If I cannot agree with your appeal, I will set out my reasoning and I will offer to have an HMRC officer, who has not previously been involved in he case, review the matter. I will also tell you about your right to go to an independent tribunal."

THE GROUNDS OF APPEAL

45. The Appellant's grounds of appeal as stated in its two Notices of Appeal are as follows:

(1) That the Closure Notice was in effect countermanded by the repayment of tax (Ground 1).

(2) That the requirements of para.13, sched.11A ("Para.13") were not satisfied, and in particular that (i) the Closure Notice was not an assessment for the purpose of Para.13(1)(a) and (ii) any deficiency in the issue of an assessment is not cured by section 83(2) (Ground 2).

(3) That, in the event that the requirements of Para.13 were not satisfied, the Notice of Assessment issued under para.29, sched.10 was also invalid as the limitation contained in para.30, sched.10 applied (Ground 3).

46. Notwithstanding the Grounds of Appeal, Mr Cannon in his skeleton argument and submissions made during the hearing, appeared to concede that an assessment had in fact been made. His primary submission then became that the assessment had not been issued within the time period required by Para.13(1)(a).

47. For the sake of completeness and the avoidance of doubt we have however considered all the Appellant's grounds of appeal as outlined in its notices of appeal.

48. It is common ground that:

(1) The Appellant's claim for overpayment relief was made under para.34, sched.10.

(2) An enquiry was opened in respect of that claim under para.7, sched.11A by the issue of a notice of enquiry.

(3) A refund was initially paid in respect of the relief claim.

(4) The refund claim was rejected as it fell within Case A, para.34A, sched.10.

BURDEN OF PROOF

49. The burden of proof in this appeal lies with HMRC, the standard of proof being the ordinary civil standard which is the balance of probabilities.

RELEVANT LEGISLATION

50. We set out below the legislation relevant to the points in issue.

51. Sched.11A applies to claims which are not included in returns and so applies to claims for SDLT overpayment relief made under para.34, sched.10.

52. Para 6, Schedule 11A provides as follows:

> 6 Giving effect to claims and amendments
>
> (1) As soon as practicable after a claim is made, or is amended under paragraph 4 or 5, the Inland Revenue shall give effect to the claim or amendment by discharge or repayment of tax.
>
> (2) Where the Inland Revenue enquire into a claim or amendment-
>
> (a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 11 (completion of enquiry) and then it applies subject to paragraph 13 (giving effect to amendments under paragraph 11), but
>
> (b) the Inland Revenue may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as they think fit.

53. Para 11, Schedule 11A outlines what happens when an enquiry into an overpayment relief claim is completed and provides as follows:

> 11. Completion of enquiry
>
> (1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a "closure notice") inform the purchaser that they have completed their enquiries and state their conclusions.
>
> (2) A closure notice must either-
>
> (a) state that in the opinion of the Inland Revenue no amendment of the claim is required, or

(b) if in the Inland Revenue's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

…

(3) A closure notice takes effect when it is issued.

54. Para.13, sched.11A deals with giving effect to amendments under para.11 and provides:

13. Giving effect to amendments under paragraph 11

(1) Within 30 days after the date of the issue of a notice under paragraph 11(2)(b) (closure notice that amends claim), the Inland Revenue shall give effect to the amendment by making such adjustment as may be necessary, whether

(a) by way of assessment on the claimant, or

(b) by discharge or repayment of tax.

(2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.

55. The Discovery Assessment was issued pursuant to para.29, sched.10 which provides as follows:

29. Assessment to recover excessive repayment of tax

(1) If an amount of tax has been repaid to any person that ought not to have been repaid to him, that amount may be assessed and recovered as if it were unpaid tax.

(2) Where the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been repaid.

(3) The power to make an assessment under this paragraph in respect of a transaction for which the purchaser has delivered a land transaction return is subject to the restrictions specified in paragraph 30.

56. Para.30 provides as follows:

30 Restrictions on assessment where return delivered

(1) If the purchaser has delivered a land transaction return in respect of the transaction in question, an assessment under paragraph 28 or 29 in respect of the transaction—

(a) may only be made in the two cases specified in sub-paragraphs (2) and (3) below, and

(b) may not be made in the circumstances specified in sub-paragraph (5) below.

(2) The first case is where the situation mentioned in paragraph 28(1) or 29(1) is attributable to fraudulent or negligent conduct on the part of—

(a) the purchaser,

…

(3) The second case is where the Inland Revenue, at the time they—

(a) ceased to be entitled to give a notice of enquiry into the return, or

(b) completed their enquiries into the return,

could not have been reasonably expected, on the basis of the information made available to them before that time, to be aware of the situation mentioned in paragraph 28(1) or 29(1).

(4) For this purpose information is regarded as made available to the Inland Revenue if—

(a) it is contained in a land transaction return made by the purchaser

(b) it is contained in any documents produced or information provided to the Inland Revenue for the purposes of an enquiry into any such return, or

(c) it is information the existence of which, and the relevance of which as regards the situation mentioned in paragraph 28(1) or 29(1)—

(i) could reasonably be expected to be inferred by the Inland Revenue from information falling within paragraphs (a) or (b) above, or

(ii) are notified in writing to the Inland Revenue by the purchaser or a person acting on his behalf.

(5) No assessment may be made if—

(a) the situation mentioned in paragraph 28(1) or 29(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been computed, and

(b) the return was in fact made on the basis or in accordance with the practice generally prevailing at the time it was made.

Ground 1

Submissions

57. The Appellant's Notice of Appeal referred to the "confusing and contradictory effect of HMRC issuing the SDLT refund on the same day as they issued the Closure Notice".

58. It claimed that this led the Appellant to understand that "HMRC had agreed to the refund by making the repayment and that any details in the Closure Notice were a mistake and in effect countermanded by the repayment".

59. Ms Jeewon, submitted that this was incorrect, drawing attention, in her skeleton argument, to the distinction between money provisionally repaid to the Appellant and a liability that arose as a result of the Closure Notice and assessment. She pointed out that claims could be given effect to provisionally during the course of an enquiry but once the enquiry was concluded a Closure Notice could reject the claim and request that money repaid to the taxpayer be paid back via assessment.

Discussion

60. The legislation operates in a very mechanical way.

61. The refund was authorised (on 7 January 2023) whilst the refund claim was being considered.

62. This was because HMRC gave effect to the Appellant's claim on a provisional basis as it was entitled do in its discretion under para.6(2)(b), sched.11A which provides that:

> "[HMRC] may at any time *before then* give effect to the claim … on a provisional basis, to such extent as it thinks fit."

63. The reference to "before then" (which we have italicised) is a reference to para.6(1), sched.11A which is the provision requiring HMRC to give "final effect" to the claim.

64. By opening an enquiry into the claim, "final effect" to the claim could only be given once a closure notice was issued as per para.6(2)(a), sched.11A.

65. Ms Lutzuver acknowledged in her witness evidence that refunding an overpayment claim before determining whether the refund was actually due might appear confusing to a taxpayer – a point made expressly by Ms Ellis.

66. In this regard Ms Jeewon referred in her skeleton argument to published guidance on HMRC's website (Stamp Duty Land Tax online and paper returns – under the sub-heading "How to apply for a refund") which sets out the position as follows:

> "To process refunds quickly, HMRC will ordinarily make the payment without checking eligibility. We reserve the right not to do so for revenue protection reasons,
>
> This means that even after a repayment has been made, we have not agreed that the refund is due. We have up to 9 months to make a compliance check on your amended return or claim.
>
> If you receive a payment where the amount you claimed was not due, you must pay it back along with any interest due. If penalties apply, you must also pay them."

67. We agree that refunding tax before processing the relevant refund claim is potentially confusing for an ordinary taxpayer who might not understand the way that such relief claims work.

68. However, it is also clear that this is the way in which the legislation operates – and that a refund is not a discharge of the claim it is instead HMRC giving effect to the claim "on a provisional basis".

69. Ms Lutzuver also explained the position to the Appellant in the Closure Notice itself in the "What you need to do now" section which referred to the refund of SDLT plus interest having been processed, describing it as an "error" as no refund was due. Although there was no "error" – as it was a permitted provisional payment as per para.6(2), sched.11A, it was made clear to the Appellant that there was no entitlement to the refund and that it was to be repaid.

70. We find accordingly that the refund of SDLT did not "countermand" the tax stated as payable under the Closure Notice.

Ground 2

71. This ground requires us to consider whether the requirements of Para.13 were satisfied.

72. Para.13 requires HMRC to give effect to the amendment contained in a Closure Notice by making the necessary adjustments by way of assessment on the Appellant

Submissions

73. Mr Cannon submitted that the Closure Notice was not an "assessment" for the purposes of Para.13(1)(a).

74. He contended that the requirements of Para.13 were not, therefore, satisfied as HMRC did not, in accordance with Para.13(1)(a), give effect to the amendment required by the Closure notice "by way of assessment on the claimant" made within the requisite statutory period – that period being within 30 days of the Closure Notice.

75. Ms Jeewon submitted that the requirements of Para.13 were fully satisfied and that an assessment had been made within the requisite period. She acknowledged however that the assessment and Closure Notice were not the same thing.

76. There are a number of issues contained within Mr Cannon's submission. First, was the Closure Notice an assessment? Second, if the Closure Notice was not an assessment was there an assessment made on the Appellant and when? Third, was the assessment made within the required timeframe?

Was the Closure Notice an assessment

77. Both parties agreed at the hearing that there is a distinction between an assessment and a closure notice. We agree.

78. That distinction is clear from paras.11 and 13, sched 11A. Specifically:

79. Para.11(1) is a mechanical provision which determines that an enquiry is closed by a closure notice. It states that a closure notice is a notice by which [HMRC]:

> "inform the purchaser that they have completed their enquiries and state their conclusions".

80. Para.11(2) (b) requires that closure notice (where a claim is insufficient or excessive) to:

> "… amend the claim so as to make good or eliminate the deficiency or excess"

81. Para. 13 then provides that "within 30 days after the date of issue" of the closure notice, HMRC

> "shall give effect to the amendment by making such adjustment as may be necessary"

which in the case of an amount payable by the taxpayer is, as per Para.13(1)(b)

> "by way of assessment on the claimant".

82. These provisions make it clear that the closure notice is, accordingly, the instrument which ends the enquiry and amends the return and the assessment is the instrument which then "gives effect to" the amendment made by that closure notice.

Was an assessment issued?

83. Having established that the Closure Notice is not the *assessment* required for Para.13, it is necessary to consider whether in fact an assessment had been made.

84. Mr Cannon acknowledged at the hearing and in his skeleton argument that an assessment had in fact been made, his argument focussing on the fact that the assessment had not been issued within the time period required by Para. 13.

85. Ms Jeewon submitted that an assessment had been made when Ms Lutzuver entered the charge on to the HMRC internal system.

86. We were directed by both parties to the Court of Appeal decision in *Honig and Other v Sarsfield* [1986] BTC 205 and to the Special Commissioner's decision in *Courbally-Stourton v R&C Commrs* [2008] SpC 692.

87. In *Honig*, the Court of Appeal had to consider when an assessment had been made for the purpose of s.29 of the Taxes Management Act 1970. It considered the evidence available as to the Inland Revenue's (as it then was) internal processes.

88. Here the evidence provided to the Special Commissioners included physical "assessment books" for the Tax District of Walworth for the relevant year (1970). Each assessment book contained individually numbered originals of the assessments corresponding to the notices of assessment issued to the appellant, each original stating the date on which it was issued. The evidence also included a certificate signed by an inspector of taxes confirming that he had made a set number of assessments on a specific date – those numbers covering the assessments in question. [p.208]

89. Fox LJ found that the assessment had been made when the inspector who was authorised to make the assessments signed the certificate.

90. *Honig* addressed the position prior to the advent of computerisation. In *Corbally-Stourton*, it was explained to the Special Commissioner that HMRC's practice as outlined in Honig had changed. The Special Commissioner described the position presented as follows:

> "91.Dr Brannigan told me that no longer is an assessment book maintained, HMRC's practice now is that the relevant officer will write to the taxpayer indicating that an assessment is to be made and will key into HMRC's computers the amount of the assessment. That was what had happened with the Appellant. Once keyed into the computer the amount appears a record maintained by the computer (and capable of being printed out) of the taxpayer's statement. I was shown a printout of the Appellant's statement which showed an entry for an 'adjustment from [self-assessment] return 18 October 2004' recording the entries made when the Appellant was notified that she would be assessed.
>
> 92. Mr Barnett put the Respondents to proof that the Appellant had been assessed.
>
> 93. It seems to me that Dr Branigan made the assessment when, having decided to make it, he authorised the entry of its amount into the computer. I find that the assessment was made."

91. The description of HMRC's processes in *Courbally* corresponds closely to those described by Ms Lutzuver. As her evidence shows, she entered what she regarded as the assessment into the HMRC computer system on 11 January 2022, the same day as she entered the Closure Notice on to the system.

92. We have also seen, in our hearing bundle, a screen shot of the system showing the Appellant's account and the entries for the SDLT assessment together with the separate entry for interest.

93. We find, accordingly, that an assessment was made and that it was made on the date on which it was entered into the HMRC system by Officer Lutzuver which in this case was 11 January, the day before the Closure Notice was issued to the Appellant.

94. We also find that the assessment was made "on" the Appellant – given that it imposed a charge which was recorded on the Appellant's HMRC account.

Did the assessment satisfy the requirements of Para.13?

Submissions

95. Mr Cannon contended that as the assessment was issued either on or before the date of issue of the Closure Notice, the requirements of Para.13(1) were not satisfied.

96. He placed emphasis on the following words in Para.13(1) which we have italicised:

> "(1)*Within 30 days after the date of issue of a notice under paragraph 11(2) (b)* (closure notice that amends claim), the Inland Revenue shall give effect to the amendment by making such adjustment as may be necessary, whether-
>
> (a) by way of assessment on the claimant, or
>
> …

97. Mr Cannon submitted that sched.11A contained a "closely articulated and highly particularised form of wording" for dealing with overpayment relief claims made outside of a return. In his view there was therefore little or no room for a purposive construction when interpreting the provisions of the schedule.

98. On this basis he said that Para.13 had to be seen as setting out a very precise window within which the assessment on the Appellant had to be made. As this window was expressed to start within 30 days *after* the date of issue of the Closure Notice, and as the assessment was at best made *on or before* the date of issue of the Closure Notice this requirement was simply not met.

99. Ms Jeewon argued that this was not the case. She submitted that Para.13 simply set a deadline for issue of an assessment – that deadline being 30 days after issue of the related closure notice. The purpose of the deadline was to give a backstop to the date on which an amendment made in a closure notice could be implemented by the issue of an assessment. Its purpose was, to put it another way, not to preclude an earlier assessment – but to prevent a late one.

100. Ms Jeewon also explained that logically the process would be for an assessment to be made at or before the time at which the notice was given to the taxpayer. This was because at the time an HMRC officer was in a position to issue a closure notice, he or she would have had to quantify the insufficiency or excess in order to outline it in that closure notice. It would not make sense to delay entering that assessment into the HMRC computer and, as Ms Lutzuver's evidence had shown, it was the practice of the SDLT compliance team to enter the associated assessment at the same time as entering the closure notice into the system.

Discussion

101. The question for us to determine is whether the requirement for HMRC to

> "within [30 days] after the date of issue of a [closure notice]"

give effect to the amendment

> "by way of assessment"

creates a specific window within which issue of an assessment must occur or whether it is a backstop for issuance of that assessment.

102. The Explanatory Notes to Finance Act 2004 which introduced the relevant provisions in FA 03 are not particularly helpful – they simply explain the mechanical operation of the provisions.

103. In our view, the purpose of Para.13 is to give taxpayers who are the subject of an enquiry, certainty as to when their tax position will be determined finally – i.e. when, in the case of payments due from them, they will receive an assessment. This is a necessary part of sched. 11A as there is no underlying tax return that can be amended and so the general legislative time limits for amending returns are inapplicable.

104. We prefer therefore Ms Jeewon's interpretation of Para.13(1) – which accords with what we see as its purpose. Under that interpretation, it provides a backstop for the issue of an assessment and does not preclude assessments made either before or at the same time as issuance of a closure notice.

105. This is a common-sense interpretation that does not strain the language of the provision and in support of this approach we note the following:

(1) There is nothing in Para.13(1) which precludes the issuance of an assessment on or *prior* to the date of issuance of a closure notice.

(2) Para.13(2) provides expressly that:

> "An assessment made under sub-paragraph (1) is not made out of time if it is made within the time mentioned in that sub-paragraph"

It does not state that assessments made *prior* to the time mentioned in the sub-paragraph are out of time.

(3) If the purpose of the provision is to give a taxpayer certainty as to the latest time by which an assessment could be issued, it would be illogical for earlier assessments to be invalid.

106. On this basis we find that the requirements of Para.13 were satisfied and that a valid assessment was issued to the Appellant.

107. Given this finding we do not consider HMRC's alternative argument as to the application of s.83 FA 03. There is also no need for us to consider Ground 2 which is contingent on Ground 1 succeeding.

DECISION

108. For the reasons given the Appellant's appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

109. 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.

JUDGE VIMAL TILAKAPALA
TRIBUNAL JUDGE
Release date: 30th OCTOBER 2024