



**TC01289**

**Appeal reference: TC/2010/07203**

*VALUE ADDED TAX – cancellation of registration – Commissioners’ view that the Appellant was not making taxable supplies – reasonableness of the Commissioners’ decision – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX**

**SYSTEM FABRICATORS LTD**

**Appellant**

**- and -**

**THE DIRECTOR OF  
BORDER REVENUE**

**Respondents**

**Tribunal: Lady Mitting (Judge)  
Michael Atkinson (Member)**

**Sitting in public in Birmingham on 13 June 2011**

**The Appellant did not appear and was not represented**

**Joshua Shields of counsel, instructed by the General Counsel and Solicitor to Her Majesty’s Revenue and Customs for the Respondents**

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## DECISION

1. The decision under appeal is that of the Commissioners, communicated to the Appellant by letter dated 7 September 2010, to deregister the Appellant with effect  
5 from 1 June 2010.

2. When the case was called on for hearing, there was no representation on behalf of the Appellant. Notice of the hearing had been served on the Appellant at 58 Elmsdale Avenue, Coventry, the only address which either the Commissioners or the tribunal had for the company. The tribunal clerk telephoned the number given in the  
10 Notice of Appeal for the company. The number was answered by a lady who announced herself to be a friend. She advised that although she thought Mr. Singh, the sole director, was living with friends, 58 Elmsdale Avenue remained the current business address and all post delivered to that address would be seen. She had no knowledge of today's hearing and thought that Mr. Singh was taking his father to a  
15 hospital appointment. The Commissioners had attempted within the last month to serve on the Appellant at 58 Elmsdale Avenue their witness statement, their bundle of documents and counsel's skeleton argument. Delivery of the witness statement was attempted on 19 May 2011 by TNT. Their note of non-delivery reads "delivery was attempted, however this was refused as unknown at address". This was followed up  
20 by a letter from the Commissioners to the company dated 24 May, advising of their attempt to serve the witness statement and asking whether there was an alternative address to which it should be sent. This letter was sent by recorded delivery but as there was no-one in to receive it, a postcard was left asking the addressee to collect it from the post office. This has never been done. As far as the bundle of documents  
25 and skeleton arguments were concerned, TNT's record of non-delivery refers to the company having moved to a different address. Given that all communication has been to the only known address of this company and that confirmation was given on the morning of the hearing that this remained the business address, we are quite satisfied that proper notice of the hearing had been given and that it was in the  
30 interests of justice that we should proceed in the absence of the Appellant.

3. The decision was made pursuant to paragraph 13(3) Schedule 1 VAT Act 1994 which provides:

35 "Where the Commissioners are satisfied that on the day on which a registered person was registered he was not registrable, they may cancel his registration with effect from that day."

4. The tribunal's jurisdiction is supervisory and the decision can only be successfully challenged if the tribunal were to find that the decision maker either took into account some irrelevant material or failed to take into account something that was relevant or that he incorrectly applied the law or that the decision was one which  
40 could not reasonably have been reached.

5. The Appellant's application for registration was dated 4 June 2010 and registration was requested with effect from 1 June. In accordance with standard

practice, the Commissioners made routine checks and registered the Appellant as requested with effect from 1 June 2010. It should be noted that the description of the business activity was “fabricator and steel”. It was pointed out that this company is never known to have been involved in any such business.

5 6. Following registration, by a letter dated 10 August 2010, Mr. Leslie Pitt  
requested a meeting with the Appellant to inspect its records. In response to this letter  
on 24 August, Mr. Pitt received a telephone call from a Mr. Rashpal Singh who was  
the sole director of the Appellant company. An appointment was made for Mr. Pitt to  
attend at 58 Elmsdale Avenue on 9 September. Mr. Pitt followed this up by a letter  
10 confirming the details of the appointment and setting out the full business records  
which he wished to inspect. This letter pointed out to the Appellant that if the  
appointment were to be cancelled, one option open to the Commissioners would be to  
cancel the VAT registration. Mr. Pitt received a letter dated 7 September 2010  
cancelling the appointment. Mr. Pitt had grave reservations about this company for  
15 reasons which we set out below and with the cancellation of the appointment, he took  
the decision to effect immediate deregistration. He had seen no evidence that the  
company was trading or making any taxable supplies and concluded it was not  
therefore eligible to be registered. However, as we say, Mr. Pitt’s decision was based  
on rather wider knowledge than the mere failure to provide evidence of trading.

20 7. CIS returns lodged with the Commissioners indicate that between July and  
November 2010, the Appellant had received payments for the supply of labour from  
five customers in the total sum of £381,610. The first three of these payments, from  
three different employers, would have been received in the weeks immediately prior  
to the telephone conversation between Mr. Singh and Mr. Pitt, and yet in the course of  
25 the phone call Mr. Singh claimed not to be able to recall the names of his customers.  
Mr. Singh had also, in the course of this telephone call, advised Mr. Pitt that he had  
ten employees but that they were not working at the time as the ganger’s mother had  
died in India. The Appellant company had also submitted a nil VAT return for a  
period when trading was quite clearly indicated by the CIS records. Further, in the  
30 course of the telephone conversation, Mr. Singh denied to Mr. Pitt that he had ever  
been a director of any other company. This was known to Mr. Pitt to be untrue as he  
had had previous contact with Mr. Singh as director of a company called Lakesite  
Construction Ltd which Mr. Pitt had also deregistered on the ground that, although  
claiming to be making taxable supplies as a labour provider, the company had  
35 produced no evidence of any such supplies. Yet further, the Appellant company itself  
had previously been registered and deregistered for the identical reason in 2008/2009.  
The director at that time was a Jaspal Singh Kular who was and remains the sole  
shareholder of the Appellant company. The decision to deregister the company first  
time around was based on the fact that over two meetings, Mr. Kular was unable to  
40 show any knowledge of the day to day running of the Appellant and there were  
significant inconsistencies in terms of the sums claimed to have been paid as against  
the company records.

8. Mr. Pitt therefore, when he made the decision in relation to this registration, had  
a history of work allegedly being carried out by the Appellant but without sufficient  
45 staff to carry it out; VAT not being accounted for; the director’s knowledge of his

own company business being remarkably limited, and the failure to supply any evidence whatsoever that any trade was being carried out and that any taxable supplies had been made. We are quite satisfied that given these facts, the decision which Mr. Pitt made was reasonable. The matters which he took into account were all relevant. We were told of nothing that he should have taken into account but failed to, and his decision was clearly in accordance with law.

9. We therefore find that the decision was reasonable and the appeal is dismissed. Mr. Shields made an application for costs which we refuse.

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.

**LADY MITTING  
JUDGE**

**Release Date: 30 June 2011**