



TC01386

Appeal number TC2010/7219

VAT – INPUT TAX – *the disputed amounts incurred in accounting periods which predated the claim by four years - the claim was time barred by the four year cap – no discretion to waive the cap – Appeal dismissed*

FIRST-TIER TRIBUNAL

TAX

G F MERCER LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: MICHAEL TILDESLEY OBE (TRIBUNAL JUDGE)
DAVID EARLE**

Sitting in public at Vintry House, Wine Street Bristol BS1 2BP on 5 August 2011

The Appellant did not appear

Gloria Orimoloye, Advocate for HMRC

DECISION

The Appeal

1. The Appellant appealed against HMRC's decision dated 14 June 2010 and confirmed on review dated 26 July 2010 denying input tax in the sum of £17,025 in respect of VAT periods 03/00, 03/01, 03/02, 03/03, 03/04 and 03/05.

2. The Appellant considered that it was wrong that it should not be entitled to recover VAT which had been paid to HMRC in error. HMRC pointed out that it had no discretion in this matter. The overpayment of VAT occurred in accounting periods predating the repayment claim by four years. The claim was, therefore, outside the four year time limit in which valid claims for repayment could be made. In HMRC's view the Appeal must fail because the Tribunal had no power to waive the four year cap.

3. The notice of appeal was lodged with the Tribunal outside the 30 day time limit. The Tribunal extended the time to 13 September 2010 for lodging the notice to which HMRC did not object. Similarly the Tribunal granted HMRC's application to extend the time limit in respect of the service of its statement of case, which was some eight days late.¹

4. The Appellant did not attend the hearing. HMRC applied for the Appeal to be heard in the absence of the Appellant. The Tribunal decided to proceed with the hearing in accordance with rule 33 of the Tribunal Rules 2009. The Tribunal noted that the notice of hearing was addressed to Unit 4 Avonside Industrial Park, St Phillips, Bristol BS2 0UQ which did not include Avonside Road. The Tribunal considered this omission would not have prevented service of the notice on the Appellant, particularly as the notice identified the correct unit and postcode. The Tribunal was, therefore, satisfied that the Appellant had been duly notified of the hearing. The Tribunal attempted to contact the Appellant by telephone but the numbers given by the Appellant did not yield a valid ring tone. The Tribunal considered that it was in the interests of justice to hear the Appeal. The Appellant had not contacted HMRC since service of the statement of case. The Appeal had no realistic prospect of success.

Reasons

5. The Tribunal makes the following findings of fact:

(1) On 4 May 2010 HMRC received an undated letter from the Appellant claiming repayment of VAT in the sum of £22,623 for periods 03/00, 03/01, 03/02, 03/03, 03/04, 03/05, 03/06, 03/07 and 03/08.

(2) The ground for the repayment was that the Appellant had discovered a problem with its accounting software which meant that the input tax on invoices processed in the last quarter of a calendar year but paid in a subsequent quarter

¹ The Tribunal has specific powers under The Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules 2009 to extend the time limits for receipt of notices of appeal and service of statements of case

were not captured on the VAT return resulting in an overpayment of VAT in the first return of a new calendar year. According to the Appellant, the software glitch was not identified by the Appellant's accountants when auditing the accounts, and also missed by HMRC officers on two separate VAT inspections.

5 (3) On 14 June 2010 HMRC denied repayment of VAT in the sum of £17,025
in respect of VAT periods VAT periods 03/00, 03/01, 03/02, 03/03, 03/04 and
03/05 on the ground that the claim for repayment was made outside the four year
time limit. HMRC repaid the sum of £5,598 representing the VAT overpaid in
10 periods 03/06, 03/07 and 03/08 for which the claim was made within the four
year cap.

6. The Appellant's case was summed up in an e-mail from its Managing Director,
Mr J Mercer, to HMRC dated 5 July 2010:

15 "Thank you for your letter dated 14 June, I am grateful that you accept
we have overpaid on our VAT and have agreed an error correction of
£5,598. I would, however, like to appeal against the decision to restrict
my application to four years, as I do not believe these are normal
circumstances. As I explained in my previous correspondence, I feel
that HMRC are at least partially to blame for the error and I feel that as
20 it is a substantial amount of money (to us) it is not fair that this money,
which you do not deny is rightfully mine should be withheld due to the
length of time elapsed".

7. The Tribunal's starting point for its consideration of the facts is the legislation.
Regulation 29 of the VAT Regulations 1995 places a four year time limit on the
refunding of input tax claims, and provides as follows:

25 "(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
30 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.

35 (1A) Subject to paragraph (1B) the Commissioners shall not allow
or direct a person to make any claim for deduction of input tax in terms
such that the deduction would fall to be claimed more than 4 years
after the date by which the return for the first prescribed accounting
period in which he was entitled to claim that input tax in accordance
with paragraph (1) above is required to be made.

40 (1B) The Commissioners shall not allow or direct a person to make
any claim for deduction of input tax where the return for the first
prescribed accounting period in which the person was entitled to claim
that input tax in accordance with paragraph (1) above was required to
be made on or before 31st March 2006".

45 8. Mr Mulcahy of HMRC in a letter to the Appellant dated 1 July 2010 explained
the origin and the purpose of the four year capping provisions:

“I understand that your particular concern is that you can only claim back 4 years of the VAT the company has overpaid. I can tell you that this is correct and that such legislation is referred to as the capping regulations.

5 It is important to explain that it is Parliament that is responsible for drafting and introducing new legislation, not HMRC but I can give you some background as to why the capping provisions were brought in.

10 The legislation came about because of concerns raised following legal challenges to various aspects of VAT legislation. If these challenges had been successful then they could have led to claims going back to 1973 when VAT was introduced.

15 Because the level of such claims could not have been anticipated or provided for by the Exchequer, capping was introduced in 1996. The capping provisions do work both ways, in that if a company underpays VAT then HMRC could normally only assess the taxpayer for the last 4 years. Either side can therefore lose out depending on the circumstances of each case.

The capping regulations for VAT have recently been extended to 4 years; prior to this claims such as this one were restricted to 3 years”.

20 9. The legislation does not give the Tribunal power to waive or extend the four year time limit in which claims for input tax must be made. The Tribunal is obliged to operate within the law. The Appellant’s dispute concerned a claim for input tax which was made after the four year time limit. The Tribunal has no discretion in this matter.

Decision

25 10. For the reasons given above the Tribunal dismisses the Appeal and upholds HMRC’s denial of input tax in the sum of £17,025 in respect of VAT periods 03/00, 03/01, 03/02, 03/03, 03/04 and 03/05.

30 11. 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.

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TRIBUNAL JUDGE
RELEASE DATE: 9 August 2011

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