



TC01535

Appeal number: TC/2011/01579

VAT – deregistration – fall in Appellant’s sales to below registration threshold – Application to deregister – power of the Commissioners to deregister retrospectively – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

ILKLEY DRESS AGENCY

Appellant

- and -

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

Respondents

**TRIBUNAL: LADY MITTING (JUDGE)
DEREK ROBERTSON (MEMBER)**

Sitting in public in Manchester on Monday 10 October 2011

The Appellant did not appear and was not represented

Pat Roberts of HM Revenue and Customs, for the Respondents

DECISION

1. Ms Caroline James is a sole proprietor trading as the Ilkley Dress Agency. She appeals against a decision of the Commissioners by which they refused to deregister her retrospectively and consequently also refused to refund the VAT accounted for during the period of registration.

2. The Appellant did not attend the hearing, having written in to explain that she would not be doing so and asking that the tribunal should consider the case on the paperwork which we agreed to do.

3. Ms James carries on the business of selling designer second hand clothing and accessories. Ms James took over the business as a going concern on 1 October 2006 and she continued to submit and pay on quarterly returns thereafter. By application dated 2 November 2010, Ms James applied to deregister, following fallen turnover, the application being received by the Commissioners on 3 November. In the application to deregister, Ms James asked for the deregistration to be backdated to 1 September 2010, explaining that the business could in fact have deregistered at the end of 2008. In a further letter, Ms James explained that the overpayment was a result of the fact that her VAT liability was declared quarterly throughout the year so that her annual turnover was not confirmed until the end of her financial year at which time it would be picked up by her accountant. It was only at that point, Ms James explained, that her continuing liability to be registered could be established.

4. The Commissioners advised Ms James that the effective cancellation date would be 3 November 2010 on the basis that her turnover had reduced but that it was not possible for her to be deregistered retrospectively.

5. Further correspondence and communication ensued between Ms James and the Commissioners but by letter dated 1 February 2011, the Commissioners upheld the decision to refuse to backdate the deregistration on the basis that there was no statutory provision enabling them to do so.

6. Ms James appealed to the tribunal by application dated 23 February 2011 giving the following grounds of appeal:

“I am a self employed Ladies Retailer, taking over the business in October 2006. The previous owner had been registered for VAT so automatically I registered.

Your records will confirm that the completion of my VAT returns along with payment has always been completed and input promptly. The direct debit payment always been paid directly without delay. I have always dealt with the VAT returns myself.

The payment has, I believe, made in good faith as my books are only submitted to my accountant at the end of my financial year which is the end of September. At this stage my turnover is calculated for the year.

It was then that it was noticed that my turnover figure had reduced under the threshold required for VAT payment.

5 In retail, especially in the current climate, it is impossible to forecast the annual turnover until the end of your financial year. But at this stage my quarterly VAT returns have already been submitted and payment made. The turnover figures produced by my accountant confirm that my turnover for my financial year ending 30 September 2010 are net - £48,316, gross - £56,316.

10 When a retailer is clearly under the current threshold, and returns along with the payments have been submitted and paid, any overpayment should be allowed to be refunded as these payments are made in advance of the year end figures.

The amount already overpaid in VAT is £6,637.87.

I retail second hand Ladies Clothes and Accessories, and have been paying VAT on my 50% commission on the sale of these goods.

15 VAT has not been charged to any of my customers when they have purchased any item from my business. I can also confirm that the VAT number is not shown on any documentation issued to the customer. The amount the customer pays for any item is the ticket price on the goods of which I receive 50% commission. VAT is not calculated in any of the prices on the goods.

20 I then have paid VAT on my commission, as per terms for 'Sale of Second Hand Goods'.

Input of my last VAT return (September and October) is still outstanding pending the outcome of this enquiry.

25 I am asking you to look at my request to backdate my deregistration application to cover my previous financial year when clearly my turnover was below the threshold limit. The date requested is October 2009."

7. The relevant law is to be found in Schedule 1 paragraph 13 of the VAT Act 1994 which at paragraph 13(1) states as follows.

"13-

30 (1) Subject to sub-paragraph (4) below, where a registered person satisfies the Commissioners that he is not liable to be registered under this Schedule, they shall, if he so requests, cancel his registration with effect from the day on which the request is made or from such later date as may be agreed between them and him. "

35 8. Given that Ms James did not attend the hearing, we considered with great care both the grounds set out in her Notice of Appeal and also the representations which had been made throughout the correspondence between the parties. We understand that Ms James prepared her own VAT returns on a quarterly basis, instructing her accountant only annually to prepare her annual accounts.

9. We have analysed with some care, the quarterly figures which Ms James returned from November 2006 to August 2010 and, as she indicated in her application, she should have been deregistered at a considerably earlier stage and it is most unfortunate that this was not noticed at the relevant time. We have every sympathy with her but unfortunately the law is quite clear. The Commissioners have no power to make a retrospective deregistration. The obligation upon the Commissioners is that where they are satisfied that someone is not liable to be registered then they shall cancel his/her registration but only with effect from the day on which the request is made or from such later date as may be agreed between them. Consequently, the cancellation of the registration cannot take effect any earlier than the date upon which it did. It follows, unfortunately for Ms James, that there can be no obligation upon the Commissioners to repay any VAT which was paid over to them during the period of registration. The appeal has therefore has to be dismissed.

10. 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: 26 October 2011

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