



**TC01569**

**Appeal number: TC/2010/06571**

*VAT – Zero rating of EU sales - invalid VAT number shown on invoices – did Appellant take reasonable steps to verify the number – no – appeal dismissed.*

*Misdeclaration penalty – reasonable excuse – no - mitigation – partial – appeal allowed in part.*

**FIRST-TIER TRIBUNAL**

**TAX**

**JANE LOUISE EYDMANN**

**Appellant**

**- and -**

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

**Respondents**

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

**Sitting in public in Manchester on 1 November 2011**

**Peter Scott for the Appellant**

**Wayne Conroy, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. The Appellant, Miss Eydmann, was appealing against (i) an assessment raised by the Commissioners in the sum of £19,731 for tax periods 04/07; 07/07; 01/08 and 04/08 and (ii) a mis-declaration penalty issued on 15 January 2009 in the total sum of £2,190. The assessment was raised to correct what the Commissioners believed to have been an incorrect zero rating of a supply by Miss Eydmann of kitchen carcasses to a customer in Spain, the Commissioners' case being that the conditions necessary to allow zero rating had not been satisfied.
2. On behalf of the Commissioners, oral evidence was given by the assessing officer, Ms Carol Hewitt and Miss Eydmann also gave oral evidence.

### Legislation and Public Notice 725

3. The law in question:

#### **a) Section 30 (6) VAT Act 1994**

- “(6) A supply of goods is zero-rated by virtue of this subsection if the Commissioners are satisfied that the person supplying the goods –

(a) has exported them to a place outside the member States; or

- (b) has shipped them for use as stores on a voyage or flight to an eventual destination outside the United Kingdom, or as merchandise for sale by retail persons carried on such a voyage or flight in a ship or aircraft and in either case if such other conditions, if any, as may be specified in regulations or the Commissioners may impose are fulfilled.”

#### **b) Section 30 (8) VAT Act 1994**

- “(8) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where-

(a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the member States or that the supply in question involves both-

(i) the removal of the goods from the United Kingdom; and

- (ii) their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and

(b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled.

35

4. Regulation 134 VAT Regulations 1995 provides as follows:

Regulation 134 of VAT Regulations 1995

“134

Where the Commissioners are satisfied that –

- 5 (a) a supply of goods by a taxable person involves their removal from the United Kingdom,
- (b) the supply is to a person taxable in another member State,
- (c) the goods have been removed to another member State, and
- 10 (d) the goods are not goods in relation to whose supply the taxable person has opted, pursuant to section 50A of the Act, for VAT to be charged by reference to the profit margin on the supply.

The supply, subject to such conditions as they may impose, shall be zero rated”

5. The conditions imposed by the Commissioners, pursuant to Regulation 134 are to be found in Paragraph 4.3 of VAT Public Notice 725, the relevant part of which reads as follows

15

VAT Notice 725, Section 4.3

A supply from the UK to a customer in another EC Member State is liable to the zero rate where:

- 20
- You obtain and show on your VAT sales invoice your customer’s EC VAT registration number, including the 2-letter country prefix code, and
  - The goods are sent or transported out of the UK to a destination in another EC Member State, and
  - You obtain and keep valid commercial evidence that the goods have been removed from the UK within the time limits set out at paragraph 4.

25 These conditions have the force of law and are clearly marked to that effect.

6. It was accepted by the Commissioners that the goods had been removed from the UK and the sole point in issue concerned the first of the conditions, namely that Miss Eydmann had not obtained and shown a valid EC VAT Registration number for her customer.

30 7. Miss Eydmann accepted, in the circumstances which we set out below, that she had not complied with this condition but maintained that she should not be liable to repay the tax, her case being that she had taken all reasonable steps to ensure the

number she did quote was correct and she had no reason to doubt its validity. Her case was, in effect, based on paragraphs 4.10 to 4.12 of public notice 725 which read as follows:

5 “4.10 Will I have to account for VAT if my customer’s VAT number turns out to be invalid?

No. but only if you:

- have taken all reasonable steps to ensure that your customer is registered for VAT in the EC
- 10 • have obtained and shown your customer’s EC VAT number on your VAT sales invoice, and
- hold valid documentary evidence that the goods have left the UK

4.11 What is meant by ‘reasonable steps’?

15 We will not regard you as having taken reasonable steps, as mentioned at paragraph 4.10, to ensure your customer is VAT registered in the EC if, for example:

- the VAT number you quote does not conform to the published format for your customer’s Member State as shown at paragraphs 16.19, or
- you use a VAT number which we have informed you is invalid, or
- 20 • you use a VAT number which you know does not belong to your customer

4.12 Will VAT be chargeable if reasonable steps are not considered to have been taken?

Yes. You will have to account for VAT at the appropriate rate on the goods in the UK.”

25 8. Also relevant to Miss Eydman’s case is paragraph 4.9. The link to paragraph 4.9 begins in paragraph 4.3 which concludes “paragraph 4.9 covers the checks that you must undertake to ensure that your customer’s EC VAT number is valid.” Paragraph 4.9 is concerned with and is entitled “Checking the validity of an EC customer’s VAT Registration number.” This paragraph gives the means of verification and concludes  
30 with the advice that a trader should regularly check their customer’s number to ensure the details are still valid and the number has not been de-registered.

### **The Facts**

9. The following facts were not challenged. Miss Eydman’s father traded as Maelstrom Lancaster (“Maelstrom”), manufacturing and supplying melamine kitchen

carcases. Miss Eydmann was employed by her father full time on a PAYE basis. One of Maelstrom's customers had for some years been a Mr Robert Bradbury. In late 2006/early 2007, Mr Bradbury moved to Spain where he commenced trading as Contract Kitchens SL ("Contract Kitchens"), continuing to purchase his carcasses from Maelstrom. It was decided by Mr Eydmann and Mr Bradbury, for commercial reasons, that Miss Eydmann would set up her own business which was to be called Kitchen Logistics. Mr Bradbury would put his orders in to Kitchen Logistics (Miss Eydmann) who would process the order, receiving the necessary goods from Maelstrom and then completing the order by supplying them to Contract Kitchens. Mr Eydmann and Mr Bradbury had agreed that they would split any trading profits which Kitchen Logistics made on a 50/50 basis with Miss Eydmann taking no drawings as she did the paperwork in her spare time. Miss Eydmann set up her business in December 2006 and ceased trading in August 2008. During this period, orders were received from Contract Kitchens, were processed as described above and invoiced, in a somewhat haphazard and belated fashion, by Kitchen Logistics.

10. On her invoices to Contract Kitchens, Miss Eydmann quoted a VAT number which had been given to her in circumstances which she could not recall, but not in writing, by Mr Bradbury. It later transpired following an inspection by Ms Hewitt that this number was valid only in respect of internal Spanish transactions and not for dealing with EU sales for which a separate number was required.

11. When Mr Bradbury left the UK for Spain, he left Maelstrom with a debt of £10,000 plus which Maelstrom wrote off as a bad debt in period 01/08. Mr Bradbury also at some stage closed down his business in Spain, leaving Miss Eydmann with unpaid invoices totalling almost £38,000. Miss Eydmann saw herself as a victim of a deliberate fraud by Mr Bradbury.

12. Miss Eydmann and her father made a series of telephone calls to the Commissioners' helpline seeking advice on how to deal with the exports to Mr Bradbury. In a call dated 5 April 07, Miss Eydmann was referred to public notice 725, section 4.3. She confirmed in the call that provided she met the conditions she could zero rate. She was told she needed "their VAT number with a 2 code letter country code prefix". A call of 29 May 2007 from Mr Eydmann was concerned in the main with the removal and shipping of the goods. A further call from Mr Eydmann dated 28 November 2007 was concerned with late invoicing but again he was referred to paragraph 4.3. A call of 30 May 2008, again from Mr Eydmann, was concerned again with late invoicing and more specifically with tax points.

### **Evidence**

13. In addition to the unchallenged evidence which we set out above, Miss Eydmann also gave evidence as to the checks which she had made on the VAT number given to her by Mr Bradbury. The evidence she gave was in part contradictory. She told the Tribunal that she had referred to paragraph 4.3 but looked no further than the boxed conditions which she believed she could satisfy. Mr Bradbury had given her a VAT number which she took at face value, believing no further checks were necessary. She also said that she had checked in paragraph 16.19 that the format of the number

was consistent. However, she later said that she may well have not made this check until after Ms Hewitt’s visit. We find that Miss Eydmann did read the boxed conditions of paragraph 4.3 but at no time took any steps to verify the number she had been given. Had she done so she would have known immediately that it was, for her purposes, invalid.

**The Appellant’s Submissions**

14. Mr Scott took us to paragraph 4.9 of the Public Notice which begins “if you are uncertain whether the number you have been given is valid you can do a preliminary check.....” His contention was that Miss Eydmann was not uncertain. She therefore had no reason to carry out any further or even preliminary checks. She had been given what she believed to be a valid number and took Mr Bradbury at his word. Mr Scott further submitted that in the wording of paragraph 4.10, Miss Eydmann had taken all reasonable steps to ensure that Contract Kitchens was registered and that the number she was given and displayed on her invoices was correct.

**Conclusions**

15. It was common ground, as we have said, that the number Miss Eydmann was quoting was not valid for the supplies she was making. The supplies could not therefore properly have been zero rated but should have been standard rated and the issue before us is whether Miss Eydmann should now have to account for the tax. She need not, following paragraph 4.10, if she took reasonable steps to ensure the validity of the number. We conclude that she did not take such steps. In fact she took no steps. Paragraph 4.3 would have lead her directly to paragraph 4.9 which sets out very simply the verification checks which any trader could and should make. Instead she relied only on having known Mr Bradbury for some four years. We do take issue with her assertion that she had no reason to doubt him. He had already reneged on a debt to her father, leaving him with unpaid invoices of £10,000 which had to be written off. This should have been, at the very least, an indication to her that it was unwise to rely, without more, on his word. We therefore find that Miss Eydmann did not take reasonable steps to verify the validity of the VAT number and she is therefore liable for the tax as assessed and her appeal against the assessment is dismissed.

**The Misdeclaration Penalty**

16. The position over this penalty is unsatisfactory to say the least. Neither party made any reference to it whatsoever in their presentation of their cases. We therefore asked for confirmation that a penalty had been issued and Ms Hewitt confirmed that it had. No mention of the penalty was made in the Notice of Appeal so we asked Mr Scott if it was under appeal. He confirmed that it was. However, despite these confirmations by both parties, still neither party addressed it or made any representations with regard to it.

17. We will therefore take it that neither party wished to make any representations and we will deal with it as we think fit. In the light of our findings as above and in the

5 absence of any representations from Mr Scott that Miss Eydmann had a reasonable  
excuse for the misdeclaration, we find that she did not. However, it does appear to us  
from the Penalty Notice that no mitigation had been allowed by the Commissioners.  
Notwithstanding this, it is open to the Tribunal to give such mitigation as they think  
10 fit provided it falls within the statutory guidelines. There is no suggestion Miss  
Eydmann offered anything other than total co-operation in all her dealings with Ms  
Hewitt and we therefore conclude that the penalty should be mitigated by 50% and we  
allow her appeal against the penalty in part.

10 18. 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  
15 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"  
which accompanies and forms part of this decision notice.

20 **TRIBUNAL JUDGE**

**RELEASE DATE: 14 November 2011**