

[2011] UKFTT 741 (TC)



TC01578

Appeal number TC/2009/0603

*VAT- whether services supplied by trader fell within Item 2 Group 5 Sch 8-
assessments determined on the available evidence.*

FIRST-TIER TRIBUNAL

TAX

C&O PLASTERING LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: CHARLES HELLIER
TOBY SIMON**

Sitting in public at 45 Bedford Square, London WC1 on 4 and 13 July 2011

Bill Maurice for the Appellant

**Christiaan Zwart, instructed by the General Counsel and Solicitor to HM Revenue and
Customs, for the Respondents**

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DECISION

1. Item 2 Group 5 Schedule 8 VATA 1994 zero rates the supply of services made in the course of construction of the building designed as a dwelling or a number of dwellings. The appellant undertook plastering work on a number of building projects. The question in this appeal with was how much of the work fell within item 2.

2. The respondents made initial assessments on the appellant in relation to periods from February 2006 to 31 October 2008 - nine VAT periods in all. The appellant had worked on some 55 projects in this period. The initial assessments were for a total of some £93,000. The appellants' advisors challenged these assessments. There was correspondence and the provision of further information. HMRC sought both independently and from the appellant's evidence to determine whether the services in relation to these projects had been services on new dwellings. The assessments were revised, but remained disputed. This appeal relates to those assessments.

3. At the hearing of the appeal the appellant produced further evidence in relation to some of the projects. By the end of that hearing HMRC had accepted that some of the appellant's supplies in relation to some further projects should be zero rated, and the appellant had accepted that other projects with standard rated. Project 5 was accepted by HMRC to qualify for the 5% VAT rate under schedule 7A VATA.

4. At the end of that hearing there were a number of projects in relation to which the appellant had provided no evidence, or evidence which was insufficient, both in our view and that of HMRC, to show that particular supplies fell within item 2. The appellant however indicated that it could produce further evidence. At the end of that hearing we therefore made directions that the appellant should send further evidence to HMRC and required that if the appellant complied with those directions HMRC should provide a revised schedule setting out HMRC's view of the VAT due, on the basis of the information received.

5. Following the hearing the appellant provided further information broadly in accordance with our directions. HMRC's officer, Mrs Chaudhary, then produced a revised schedule and wrote to the appellant 20 July 2011 indicating amended assessments. She appended schedules which showed how each relevant invoice had been treated in compiling these assessments, and a narrative explaining how she had taken into account information provided by the appellant pursuant to our direction.

6. Two of Mrs Chaudhary's conclusions call for comment. These are in relation to projects 31 and 51.

7. In relation to project 31 Mrs Chaudhary accepted that this related to new dwellings, but was unable in some cases clearly to link the entries in copy statements produced by the appellant to this particular project. There were also two entries in the appellant's workings which could, on the basis of the evidence she had received, have related to other projects. As a result Mrs Chaudhary only treated some of the invoices which the Appellant had attributed to this project as zero rated. The evidence before us was not sufficient to disturb this conclusion.

8. The second relates to project 51. Mrs Chaudhary treated this project as taxable at the standard rate in her calculations. The project was in relation to Knights Academy. Mr. Chiga (the director of the Appellant) told us that it was part of a new school. He had been told however that the work was zero rated, and produced a press cutting which supported this. It seems to us that the supplies made by the appellant were not in connection with new dwellings and did not fall within item 2 nor could the work fall within item 3 of Group 5. We conclude that the supplies were properly treated as taxable; the impact of any zero rating should have been dealt with by the main contractor, not at sub-contractor level. .
9. In other respects we see no discrepancy between Mrs Chaudhary's schedules and her explanations and found nothing in the evidence before us which called into question her conclusions.

Conclusion

10. We therefore concluded that the assessments originally made should be reduced to those indicated by Mrs Chaudhary in her letter of 20 July 2011. To that extent the appeal is formally allowed.
11. We wish to pay tribute to the diligence and fairness exhibited by Mrs Chaudhary in the way she approached these assessments.

Rights to appeal

12. 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.

CHARLES HELLIER
TRIBUNAL JUDGE
RELEASE DATE: 15 November 2011