



TC01744

Appeal number:TC/2010/06387

VAT – Input tax deduction claimed – supplies in respect of which input tax was claimed challenged by HMRC as not having taken place and the related 54 invoices as having been manufactured – burden of proof on Appellant to show that invoices were valid – Appellant failing to discharge that burden – Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

REDDROCK LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JOHN WALTERS QC (TRIBUNAL JUDGE)
JULIAN STAFFORD**

**Sitting in public at 45 Bedford Square, London WC1 on 30 and 31 March and 1 April
2011**

D.Dunham, Dunham Solicitors LLP, for the Appellant

M. Jones, Counsel, instructed by the Solicitor for HMRC, for the Respondents

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DECISION

1. At the conclusion of the hearing of the appeal on 1 April 2011, the parties were given leave to submit final submissions in writing. The Tribunal subsequently received (on 26 April 2011) submissions from the Respondents extending to 59 pages and (in early May 2011) submissions from the Appellant (dated 2 May 2011) extending to 42 pages.
2. The Tribunal intended to release a full Decision thereafter in the normal way, but it received several telephone requests from the Appellant's solicitors asking for an update on progress in the preparation of the Decision. The latest of these, received on Monday 18 July 2011, stated (as it was reported to the Tribunal) that the Appellant company 'may not last that long' and asked whether there was 'any indication or information that can be given' to the solicitors.
3. The Tribunal had made some progress with preparing a full Decision but, in view of the above requests and the fact that it could not at that time anticipate completing a full Decision before September 2011, decided to issue a summary Decision at that stage, instead of a full Decision. As stated in the final paragraph of that summary Decision, a party wishing to appeal could apply to the Tribunal for full written findings and reasons.
4. The summary Decision was issued on 10 August 2011 and the Appellant's solicitors, by now DeBello Law, applied on 17 August 2011 to the Tribunal for a decision containing the Tribunal's full written findings and reasons. This Decision is released in response to that application.
5. As stated in the summary Decision, the Tribunal has decided to DISMISS the appeal.
6. The appeal was against the decision of the Respondents ("HMRC"), notified to the Appellant on 12 April 2010, to disallow input tax totalling £273,057 claimed by the Appellant in its 02/08, 05/08, 08/08, 11/08 and 02/09 VAT returns, by reference to 54 invoices ("the Invoices") on the grounds that a) the Appellant had been unable to discharge the burden of proving that those supplies were made and that b) even if the supplies were made, the Invoices were not VAT invoices as required by Regulation 29 of the VAT Regulations 1995.
7. The Tribunal heard oral evidence from:
 - o Richard Galvin, the Appellant's Managing Director, who also provided a Witness Statement;
 - o Stephen Donnelly, formerly Managing Director and owner of MJJ Electrical Services Limited ("MJJ"), who also provided a Witness Statement; and
 - o Anthony Galvin, the son of Richard Galvin, and a Director of Altion Limited ("Altion"). Mr. Anthony Galvin is a non-practising Barrister. He also provided a Witness Statement.
 - o Officer Christopher Wells, who also provided a Witness Statement; and

- Officer James Pink, who also provided a Witness Statement.

8. The Tribunal also received Witness Statements from:

- Michael Galvin, the brother of Richard Galvin, the owner of a company called J. Fowler (Pinner) Limited (“J Fowler”) from 2003, when he acquired it, to 2007, when it failed; and
- Philip John Harris, a Chartered Accountant practising as Harris & Co. with an office in Northampton. Mr. Harris has acted for Richard Galvin and his wife, Marion, and their companies for some time.

9. Michael Galvin and Philip Harris were not called by the Appellant to give evidence, and thus Counsel for HMRC had no opportunity to cross-examine them. In all the circumstances of the case we afforded little weight to their written evidence.

10. The supplies in issue were made to the Appellant by one or other of the following companies: Altion (formerly Cable Contract Services Ltd. (“CCS”)), whose directors were Richard Galvin and Anthony Galvin, MJJ, owned by Stephen Donnelly, a friend of Richard Galvin, One Vision Corporation Limited (“One Vision”), whose directors were Stephen Donnelly, Richard Galvin and (according to the Appellant’s closing submissions) Ashley Dell, and J Fowler, whose director was Michael Galvin, the brother of Richard Galvin. The suppliers of the supplies in issue were therefore all closely connected to the Appellant.

11. The details of the 54 Invoices were:

- 3 Invoices from CCS dated 30 June 2007, 31 July 2007 and 31 August 2007 respectively. These invoices were in respect of ‘Plant Hire at Various Locations’, specifying specific hours for specific items of plant and ‘Consumables’ at VAT-exclusive charges of £2,094.31, £2,894.83 and £3,018.88 respectively.
- 3 Invoices from MJJ dated 21 December 2007, 4, January 2008 and 25 January 2008 respectively. These invoices were in respect of the supply of ‘plant and materials to your company at various locations for the period[s]’ November 2007, December 2007 and January 2008 respectively, in each case ‘as per your verbal instruction’. The relevant verbal instructions were evidenced by documents issued by MJJ to the Appellant dated 18 October 2007, 14 November 2007 and 10 December 2007. These documents recorded instructions to supply specified plant and materials to ‘your Bleak Hall Ind Estate Milton Keynes address’. It appears that the last instruction also included plant hire.
- 2 Invoices from One Vision dated 5 May 2008 and 26 May 2008 respectively, in respect of ‘negotiation/consultancy work carried out to assist in the purchase of the property at’ respectively 5 Cranford Road and Brook Farm, Yelling. These invoices were for VAT-exclusive amounts of respectively £46,162.57 and £92,325.14. The Tribunal understood that the Appellant’s case was that these (and other) invoices from One Vision were in respect of work done to produce reports, but no such reports were produced.

- 8 Invoices from MJJ dated 14 May, 2008, 16 May 2008, 19 May 2008, 1 August 2008, 8 August 2008, 15 August 2008, 22 August 2008 and 29 August 2008 respectively. These Invoices were in respect of the supply of ‘materials’ or ‘plant and materials’ and were supported by written instructions or confirmations of verbal orders which in several cases included ‘Fittings’ or ‘Misc’ (not otherwise described) at odd monetary amounts.
- 17 Invoices from One Vision dated, respectively, 7 July 2008, 21 July 2008, 11 August 2008, 18 August 2008, 22 August 2008, 25 August 2008, 27 August 2008, 29 August 2008, 1 October 2008, 8 October 2008, 15 October 2008, 22 October 2008, 29 October 2008, 5 November 2008, 12 November 2008, 19 November and 26 November 2008. The first and third of these Invoices were in respect of ‘negotiation/consultancy work carried out to assist in the purchase of’ respectively Gazeley House, Huntingdon (a VAT exclusive charge of £17,136.04) and 7/8 Market Hill, Huntingdon (a VAT-exclusive charge of £11,392.17) and were, according to the instructions letters provided to cover investigative work at the properties and ‘structural tests and interim specifications’ – as to which there was no evidence. The rest of these Invoices were in respect of ‘materials and plant supplied’ and were supported by ‘Orders’ referring to items such as ‘finish’, ‘lime’, ‘bricks’, roof slates’ and ‘roof tiles’ without any further specification and in all cases including ‘consumables’ (not otherwise described) at odd monetary amounts.
- 21 Invoices from J. Fowler dated respectively, 7 December 2008 (2 Invoices), 14 December 2008 (3 Invoices), 11 January 2009 (2 Invoices), 18 January 2009 (2 Invoices), 25 January 2009 (3 Invoices), 1 February 2009 (2 Invoices), 8 February 2009, 15 February 2009 (3 Invoices) and 22 February 2009 (3 Invoices). These invoices were in respect of the supply of listed items (builders’ materials) and in all cases included the supply of ‘gas oil’ at 35p per litre. In the cases of 3 of the Invoices, the amounts of ‘gas oil’ supplied were round numbers of litres – giving round numbers as the VAT-exclusive charge made – but in the rest of the Invoices, the volume of ‘gas oil’ supplied was odd volumes (e.g. 355.77 litres), giving rise to odd number prices as the VAT-exclusive charges made (e.g. £124.52). No supporting documents in the form of Orders or Instructions were supplied for these Invoices.

12. We agree with Mr. Jones’s observation in his closing submissions (paragraph 53) that it is strange that the Appellant has offered no direct documentary evidence in support of the validity of its invoices other than the invoices themselves and (in some cases) the written record of orders made to it. We would have expected to see other direct contemporaneous documentary evidence of the supplies, for example, where deliveries were made we would have expected to see receipts and/or delivery notes. We add that there was no direct contemporaneous documentary evidence of orders being made by third parties, such as email, fax, or postal enquiries. In the absence of sufficient satisfactory documentary evidence, in order to establish its case and discharge the burden of proof in relation to the issue of the validity of the invoices, the Appellant needed to rely on its witness evidence and in particular on the evidence of Richard Galvin, its chief witness.

13. The Appellant was said by Richard Galvin in evidence to operate a “barter system” with at least some of the companies named above. This was in addition to purchases and sales for money. According to Richard Galvin’s evidence this “barter system” involved two aspects. First, goods purchased by one company from another would not necessarily be paid for but the price would be offset against amounts owed to the purchaser by one of the other companies concerned. Secondly, goods required by one of the companies might be exchanged for different goods required by another company or other companies.

14. We found Richard Galvin’s evidence unsatisfactory and unreliable in a number of respects.

Reasons for our finding Richard Galvin’s evidence unsatisfactory and unreliable

15. The following are the main reasons for the Tribunal’s finding Richard Galvin’s evidence unsatisfactory and unreliable.

16. First, he was unsure as to which companies were in fact involved in the “barter system”. His initial response in cross-examination was that J Fowler ‘could be’ involved. He changed this later to say that J Fowler was involved. He did not initially include New Ventures Europe Limited (“New Ventures”) among the companies involved, but then suggested that it was – although there appear to be no onwards sales invoices from the Appellant to New Ventures, or any other evidence to corroborate Richard Galvin’s evidence that New Ventures was involved in the operation of the “barter system”. New Ventures appeared to us to have been a company to which the Appellant introduced business in return for a commission.

17. Secondly, Richard Galvin claimed to have carried in his head a rolling balance for a five-way inter-company netting agreement in relation to the operation of the “barter system”. This was his explanation for the absence at the appeal of any written records of the operation of the “barter system”. However the evidence of Officer Wells and Officer Pink was that at a meeting on 31 March 2009 Richard Galvin mentioned that he kept a record in a ‘little black book’. HMRC wrote in a letter dated 3 April 2009 that ‘you keep a separate record of who owes what in a book’. Richard Galvin replied to that letter on 29 April 2009 saying ‘Thank you for your letter dated 3 April 2009, the contents of which have been noted’ and not contradicting HMRC’s statement referring to a record book.

18. Richard Galvin’s oral evidence on this point was surprising, particularly given his evidence in chief that anything he did he wrote down in his diary because he was ‘quite anal like that’. Furthermore the diary for 2009, when examined by HMRC, contained nothing about the supplies said to have taken place in January or February 2009.

19. We find that Richard Galvin did keep a record book recording any transactions which the Appellant had entered into. The reasons for this finding are (1) the evidence of the Officers regarding the meeting on 31 March 2009 and the subsequent correspondence, added to inherent improbability that anyone would keep a rolling balance of this kind in his head, rather than write it down when he was able to do so; and (2) Richard Galvin’s admission in regard to the diaries that he usually wrote down anything he did.

20. Thirdly, there was a series of duplicated supporting documentation which was brought to our attention. At least four of the invoices on which the Appellant relies for its input tax

claims (being invoices from MJJ) were supported by two sets of documents being orders and instructions from the Appellant to MJJ. An example is MJJ's invoice issued to the Appellant (number 00320) dated 1 August 2008 in the amount of £15,161.69. It was supported by both a confirmation of a verbal order on the Appellant's notepaper and dated 1 April 2008 and a document on MJJ's notepaper headed 'Instruction' and dated 25 February 2008, apparently evidencing an order in the same amount but for a slightly different set of goods at different prices. Richard Galvin had no explanation for this and the other duplicate sets of supporting documents. We cannot accept that two orders for different goods at different prices could, on multiple occasions, tally exactly with the same purchase invoice. We conclude that these documents were produced in order to match the amounts shown in the Invoices in question and that the supporting documents were duplicated in error. We regard this as significant evidence showing that the Invoices relied on by the Appellant recorded fictitious transactions – i.e. transactions which did not take place.

21. Fourthly, we accept the submission of Mr. Jones for HMRC that the lists of supplies in the documentary evidence supporting the Invoices (order confirmations and purchase orders or instructions) which routinely conclude with an item inadequately described and of relatively low value (for example, "fittings @ £54.11") do not refer to small items actually ordered and supplied, but were a mechanism used to manufacture documentary evidence to support the invoices by bringing up the apparent price of goods ordered to the invoice totals. Richard Galvin had no satisfactory explanation for these items. In connection with the similar apparent purchases by the Appellant of odd amounts of 'gas oil' from J Fowler, Richard Galvin's explanation was that all these items were for stock and he said that the oil was supplied free of charge to yard owners as part of an arrangement he had with them. No evidence supporting this unusual arrangement was produced and we were not satisfied that the apparent purchases of odd amounts of 'gas oil' in fact took place.

22. Fifthly, at the meeting on 31 March 2009 between Richard Galvin and HMRC, Richard Galvin was asked by Officer Wells to produce all the supporting documentation for the Invoices in relation to which input tax was claimed by the Appellant in the 5 VAT periods concerned. All the supporting documentation was apparently available in the Appellant's files but it took just over 6 months before it was all provided to HMRC. In the circumstances we consider that this delay was unusual and invited an explanation. Richard Galvin's explanation was that he was busy with other matters, but we do not find that convincing. The delay was, we conclude, occasioned by the fact that time was needed to create documentation which appeared to support the Invoices.

23. Sixthly, substantial Invoices were apparently rendered to the Appellant for consultancy services. Stephen Donnelly gave evidence that he had, on behalf of One Vision, produced a report to the Appellant and a copy letter dated 14 October 2009 to HMRC with our papers purporting to substantiate this. The letter covered the report apparently regarding development projects in which the Appellant was interested. However, not only did HMRC deny ever having received the letter or the report, but the letter specifically referred on its face to the fact that copies of the report had not been kept (which we regard as odd and unusual and requiring an explanation which was not forthcoming). We also find it noteworthy that no copy of the report was kept, and so neither HMRC nor the Tribunal was supplied with one. These facts, together with HMRC's evidence that they had not received a copy of the report persuade us that no such report ever existed. This is more likely that the

explanation offered by Stephen Donnelly that the report had been lost in the post or in HMRC's internal mail arrangements. We add that no other evidence corroborating the provision of consultancy services by One Vision was supplied to us.

24. Seventhly, the Tribunal has seen no convincing evidence of what use was made of the supplies which the Invoices apparently evidence. There is no reliable evidence of relevant onward supplies by the Appellant, there is no reliable evidence of an enhanced stock of materials retained by the Appellant, nor is there any reliable evidence that the Appellant used the materials itself.

25. This ties in with the Tribunal's difficulty in establishing from the evidence what activities the Appellant actually undertook in the relevant VAT periods. Some evidence pointed to it being involved in property development, while Richard Galvin accepted that the Appellant had not in fact engaged in property development but was a facilitator or broker of deals by others. As late as 7 December 2009, in a letter to HMRC, Richard Galvin stated that "Reddrock Ltd. neither owns nor leases plant", yet there are numerous invoices specifying plant hire. In evidence, Richard Galvin sought to resolve this contradiction by suggesting that Reddrock used his (Richard Galvin's) own plant for the purposes of hire, but this is inconsistent with the Appellant's statutory accounts, in which one of its principal activities is listed as plant hire. The Tribunal experienced a parallel difficulty in determining what activities (if any) were undertaken by the Appellant at the addresses given by Richard Galvin including:

5 Cranford Road, Burton Latimer;
Brook Farm House, Yelling;
Gazely House, Huntingdon;
7-8 Market Hill, Huntingdon;
Martin's Yard, Spencer Bridge Road, Northampton.

Both Cranford Road and Brook Farm House were the subject of substantial Invoices from One Vision for consultancy amounting to £54,201 and £108,482 (including VAT) respectively. The witness evidence of Officer Wells cast doubt on the extent of the Appellant's involvement in these developments and Richard Galvin's evidence was inconsistent and vague. He said of Cranford Road that it was a drop-off point for delivery of materials to One Vision, but denied knowledge of what One Vision did with the materials, which was odd, and could have been disingenuous, in light of the fact that he was a director of One Vision. He said the same of Brook Farm House, and again denied knowledge of what One Vision did with the materials allegedly dropped off there.

26. Cranford Road was, from the photograph we were shown, an unremarkable residential address. We are not persuaded that it (or anywhere nearby) was used as a drop-off point for materials, as Richard Galvin claimed.

The Appellant's case

27. The Appellant's case as presented at the hearing of the appeal and confirmed in the written submissions received after the hearing had ended, concentrated on the alleged unfairness or unreliability of evidence given by, in particular, Officer Wells. Mr. Dunham

criticised the officer for not producing a copy of the notes he took at the meeting on 31 March 2009. A scanned copy of the notes was in fact produced after the hearing, together with a typed transcript. We agree that it is unfortunate that these notes were not included in the materials before the Tribunal at the time of the hearing. The notes were in fact very sparse and do not support the detailed evidence given by Officer Wells about the meeting. However we are not persuaded that we should not accept Officer Wells's detailed evidence and Officer Pink's corroborative evidence and we certainly prefer their evidence to the evidence about the meeting given by Richard Galvin – in particular in relation to the 'little black book'.

28. Likewise Mr. Dunham criticised with reason the fact that all the photographs taken by Mr. Wells had not been put in evidence at the hearing. We do not, however, draw any adverse conclusions as to the reliability of Officer Wells's evidence from the absence of photographs. Neither do we draw any adverse conclusions from Mr. Wells's refusal to schedule a meeting prior to making the decisions in issue.

29. Accepting that the burden of proof lies with the Appellant, Mr. Dunham's positive case on behalf of the Appellant was based on Richard Galvin's long experience in the utility and construction industry and the Appellant's holding of certain licences and certificates which would indicate that it was *bona fide* operating in the construction industry.

30. However insofar as the Appellant attempted to discharge the burden of proof by showing that the Invoices were for genuine supplies, it relied on the Invoices and the supporting documentation which had been the subject of severe criticism and cross-examination by HMRC – the gist of which we have recorded above. The Appellant also produced as additional evidence during the hearing 3 master agreements, two with CCS and one with One Vision, which were said to give legal support to the transactions in issue. We did not find that these agreements advanced the Appellant's case that the transactions were genuine.

Conclusions

31. The Appellant has, as indicated above, sought to discharge the burden of proof by reference to the Invoices and supporting documentation supplemented by the oral evidence of its witnesses, principally Richard Galvin.

32. We have accepted the criticisms of the Invoices and supporting documentation which HMRC advanced at the hearing and we have found Richard Galvin to be an unsatisfactory and unreliable witness. Our chief reasons are set out above. We would say that the fact found by us that Richard Galvin did keep a record book, which in oral evidence he denied, and which he failed to produce at the hearing, was particularly important in persuading us that the transactions which the Invoices are claimed to record did not in fact take place (although in strictness the significance of this aspect as a reason for dismissing the appeal is that the Appellant has failed to discharge the burden of proof on it that the transactions did in fact take place).

33. We find that the Appellant claimed amounts of input tax on its VAT returns for the five periods in question (i.e. 02/08, 05/08, 08/08, 11/08 and 02/09) and then subsequently generated invoices and supporting documents in order to substantiate those claims.

34. In the light of our conclusion that the relevant transactions did not in fact take place, it is unnecessary for us to consider the alternative basis on which HMRC invited us to dismiss the appeal, namely that none of the 54 invoices in issue constituted a valid VAT invoice pursuant to regulations 13, 14 and 29 of the VAT Regulations 1995. As consideration of this issue would be on a hypothetical basis, in the light of our decision on the first issue, we have not embarked on it.

Costs

35. HMRC in their written submissions received after the conclusion of the hearing applied for their costs in the event (which has happened) that we found in HMRC's favour on the issue of whether or not the transactions in issue took place.

36. The application is made under rule 10(1)(b) of the Tribunal Procedure (First-tier tribunal) (Tax Chamber) Rules 2009 ("the Rules") on the basis that the Appellant has acted unreasonably in bringing, defending or conducting the proceedings. Mr. Jones, for HMRC, submits that the Appellant ought to be taken to have acted unreasonably in bringing the appeal in circumstances where it knew that the supplies in issue had not in fact taken place. HMRC ask for the costs order to include the costs of the interim directions hearing held on 28 January 2011.

37. We were minded to make an order for costs on this basis at the time of issuing our summary Decision, but we first gave the Appellant an opportunity to make representations (see: rule 10(5)(a) of the Rules). We directed in our summary Decision that UNLESS the Appellant made representations as to why we should not make an order for costs on this basis, which should be in writing and received at the Tribunal Centre before 1 October 2011, we would proceed to make the order applied for. We had in mind to order costs on the standard basis to be assessed on application to the Costs Office of the Senior Court in default of agreement. As far as the Tribunal is aware, no such representations were received, and so we now make the order for costs envisaged and direct accordingly.

Right to apply for permission to appeal

38. This document contains full findings of fact and reasons for our decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Rules. 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.

JOHN WALTERS QC

TRIBUNAL JUDGE
RELEASE DATE: 12 January 2012

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