



TC01809

Appeal number: TC/2011/02153

VAT input tax – Vehicles purchased by unregistered sole trader for use in his business – Business later incorporated and registered – Could the company reclaim the input tax – No – Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

SF EXPRESS COURIER LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)
MR M FAROOQ (MEMBER)**

Sitting in public in Birmingham on 17 January 2012.

Sheldon Forbes, Director, appeared for the company.

Mrs S A Knibbs, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant company appeals against the Decision of the Commissioners notified by letter dated 3 December 2010, to disallow a claim for input tax in respect of the purchase of two vehicles.

2. The facts were not in dispute and we find to be as follows: In 2007, having been made redundant, Mr Sheldon Forbes set himself up as a self-employed sole proprietor of a freelance courier service which he titled Alba Express. He did not register for VAT. In August 2008 he took on a contract with Citylink, remaining an unregistered self employed sole trader. The work with Citylink required an upgraded vehicle and on 8 August 2008 he purchased a van, DX56 FNF (VAT element £2,065). Citylink occasionally offered additional rounds if Mr Forbes was able to provide a van and driver to carry them out. He therefore, on 18 September 2008 purchased a second van, BD07 HWS (VAT element £2,292.50). The invoices for both vehicles were made out to Alba Express.

3. In mid 2010, Mr Forbes was advised by his accountant that he should seek to incorporate the business. In July 2010 Mr Forbes registered SF Express Courier Ltd. with Companies House, he being and remaining the sole director. The Company registered for VAT with effect from 9 July 2010 and the registration remains extant. The change in trading entity brought about no change in the running of the business. The contract with Citylink remained unchanged and to all outer appearances the transition was seamless. Between October and December 2010, Mr Forbes telephoned the Commissioners' National Advice Service. There was before us a very garbled summary of one of the calls dated 9 December. It is impossible from this to gain any coherent idea of what was said by either of the parties but suffice it to say, Mr Forbes came away from his telephone conversations understanding that he was entitled to reclaim the VAT which he had paid on the purchase of the two vans. In the Company's first Return for period 10/10 the Company sought to reclaim as input tax the VAT element of the two purchases plus the VAT paid on a third van purchased in September 2010 about which there is no dispute. The Commissioners refused repayment for the two vans purchased by Alba Express.

The Law

4. Regulation 111(1) of the VAT Regulations 1995 provides as follows:

“(1) Subject to paragraphs (2) and (4) below, on a claim made in accordance with paragraph (3) below, the Commissioners may authorise a taxable person to treat as if it were input tax –

(a) VAT on the supply of goods or services to the taxable person before the date with effect from which he was, or was required to be, registered, or paid by him on the importation or acquisition of goods before that date, for the purpose of a business which either was carried on or was to be carried on by him at the time of such supply or payment, and

(b) In the case of a body corporate, VAT on goods obtained for it before its incorporation, or on the supply of services before that time for its benefit or in connection with its incorporation, provided that the person to whom the supply was made or who paid VAT on the importation or acquisition –

- 5 (i) became a member, officer or employee of the body and was reimbursed, or has received an undertaking to be reimbursed, by the body for the whole amount of the price paid for the goods or services,
- (ii) was not at the time of the importation, acquisition or supply a taxable person, and
- 10 (iii) imported, acquired or was supplied with the goods, or received the services, for the purpose of a business to be carried on by the body and has not used them for any purpose other than such a business,”

The Appellant’s Submissions

5. Mr Forbes contended that he had been the sole owner of what was in effect a
15 continuing business and the vans had been purchased by him for the sole use of that business and the VAT should therefore be repaid to him on registration. Referring to regulation 111(1) Mr Forbes relied upon (1)(b) and (1)(c). The goods had been purchased by him before incorporation. He became an officer of the incorporated company and the goods were to be used for the purposes of the incorporated
20 company. Once he received back the VAT he would use it for further investment in the company.

Conclusions

6. We refer firstly to the telephone calls to the National Advice Service. As we
25 have said, we only saw a summary of one call and that was far from clear. Mr Forbes said that he took from the calls that he was entitled to reclaim input tax and we have no reason to doubt that his evidence on this is true and that he genuinely believed he held that entitlement. However, this cannot avail him before the Tribunal as we are concerned solely with the interpretation of the legislation and an application of the facts to those provisions. The Commissioners had originally raised a penalty and the
30 content of the telephone calls would have been highly relevant to that penalty. However, the penalty had subsequently been withdrawn and was not therefore an issue before us. As we say, we are concerned with establishing the facts and applying the statutory provisions to them.

7. It is clear from Regulation 111, that the Appellant Company has no entitlement to
35 recover the input tax. Regulation 111(1) authorises, in the discretion of the Commissioners, a repayment to a *taxable person* of the VAT on a supply of goods to that *taxable person*. In this case the taxable person is SF Express Courier Ltd. but the goods were not supplied to SF Express Courier Ltd., but to Alba Express, never a taxable person. Looking specifically at (b) and following up Mr Forbes’ contention,
40 this does not assist him either. First, the goods were not obtained *for it*. They were purchased for Alba Express. Secondly, (b)(iii) provides that the goods should not

have been used for “any purpose other than such a business”. In fact the goods were used for almost two years in the running of Alba Express. Thirdly, (b)(i) provides that the person to whom the supply had been made should be reimbursed. Mr Forbes confirmed that that had not happened and no money had changed hands. Alba Express/Mr Forbes were not reimbursed. In short, what has happened here is that Mr Forbes purchased the vans for use in his sole proprietorship, Alba Express, which continued to use them for some two years. A new trading entity, SF Express Courier Ltd., was then formed and the vans continued to be used by the Company. This does not however entitle the Company to reclaim as input tax VAT which was paid by Alba Express on the purchase by Alba Express of the vans. The Appeal therefore has to fail and is dismissed.

8. 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 January 2012

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