



TC02039

Appeal number: TC/2011/03867

VAT – claim for repayment of overpaid VAT - claim made more than four years after end of accounting period in which assessment made - whether claim valid - no - section 80(1A) and (4) VAT Act 1994 - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BEDS BEDS BEDS LONDON LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE EDWARD SADLER

Sitting in public at Bedford Square on 17 May 2012

Sunita Puee, financial controller of the Appellant, representing the Appellant

Harry Jones, of the Appeals and Reviews Unit of the Respondents, representing the Respondents

DECISION

1. This is an appeal by Beds Beds Beds London Ltd ("the Appellant") against a
5 decision of The Commissioners for Her Majesty's Revenue and Customs ("the
Commissioners") to refuse to repay to the Appellant the sum of £4,722.05 which is an
amount of VAT overpaid by the Appellant. That decision was notified to the
Appellant in a letter from the Commissioners dated 18 April 2011. The
Commissioners refused to repay the tax in question on the grounds that the
10 Appellant's claim for repayment was out of time, having been made more than four
years after the date which is the relevant date for these purposes.
2. The facts in this case are straightforward, and are not in dispute between the
parties.
3. The Appellant carries on business of retailing beds and bedding and has been
15 registered for VAT purposes for many years.
4. As I mention in more detail below, for a number of years it suffered
mismanagement with regard to its VAT and other tax affairs, which resulted in a
number of failures to comply with its VAT return and payment obligations. Miss
Sunita Puree, the present financial controller of the Appellant, and who represented
20 the Appellant at the hearing, was engaged in October 2009 to sort matters out with
regard to these compliance failures, which she has endeavoured to do, working with a
number of officers of the Commissioners. The failure by the Appellant to make its
VAT return which gave rise to this appeal was not her responsibility.
5. The Appellant failed to make on time a VAT return for its VAT accounting
25 quarter 06/06. The due date for that return was 31 July 2006. In consequence an
automated assessment was issued by the Commissioners on 11 August 2006 for
£21,129.00 in respect of the Appellant's VAT liability for the period 06/06. That
automated assessment (which was made pursuant to section 73 of the Value Added
Tax Act 1994 ("VATA 1994") to best judgment) was based on previous VAT returns
30 made by the Appellant.
6. At the time of the automated assessment the sum of £19,810.08 stood to the
credit of the Appellant's account with the Commissioners, and on 11 August 2006 the
Commissioners therefore credited that sum towards payment of the £21,129.00 of
VAT so assessed.
- 35 7. Almost exactly a year later, on 10 August 2007, there was a further sum
standing to the credit of the Appellant's account with the Commissioners, and on that
date the Commissioners credited £1,318.92 in settlement of the balance of the
£21,129.00 assessed by the automated assessment.
8. Therefore by 10 August 2007 the Appellant had paid in full the VAT of
40 £21,129.00 for the period 06/06 as assessed by the Commissioners.

9. The Appellant's failure to make a VAT return for its 06/06 period was but one of a number of compliance failures of the Appellant in relation to its VAT obligations - it appears that for later periods there were failures to make returns and failures to pay VAT on the due date. When Miss Puee became involved she worked hard to put matters on a proper footing, and had many telephone conversations with officers of the Commissioners and with the Commissioners' National Advice Service, and several meetings with officers from the Debt Management Unit and other parts of the Commissioners' organisation.

10. Miss Puee knew that a return had to be made by the Appellant for 06/06, and that the Appellant could not rely on the automated assessment as representing the actual VAT liability of the Appellant for that period. There were, however, difficulties in compiling the financial records of the business in order to make the VAT return. The original records had been lost in a fire, and both the Appellant's accountant and company secretary at the time refused, or were unable, to give assistance. Miss Puee therefore had to reconstruct the records of the Appellant and to do so had to persuade suppliers to provide copy invoices and had to obtain copy bank statements. In carrying out this exercise she was unaware that a claim to recover any overpaid tax must be made within a four year period.

11. On 12 April 2011 the Appellant submitted to the Commissioners its VAT return for the period 06/06. This showed that the amount of VAT due for that period was £16,406.95. The Commissioners treated the submission of the return as a claim for repayment of £4,722.05 of VAT overpaid - that being the difference between the amount assessed automatically and paid (£21,129.00) and the amount payable according to the actual VAT return (£16,406.95).

12. However, the Commissioners refused to repay that amount of £4,722.05, even though they accepted that there had been an overpayment by reason of the Appellant paying the amount of VAT assessed in August 2006 by the automatic assessment. They argued that the law, as it must be applied in the Appellant's circumstances, requires that a claim for repayment of overpaid VAT must be made to them no later than 30 September 2010. It was made after that date (that is, on 12 April 2011), and they have no discretion to apply the law in any other way. Their refusal to repay the overpaid VAT is the decision against which the Appellant has appealed to this Tribunal. Miss Jones, who appeared at the hearing for the Commissioners, outlined the facts of the case and the relevant law and submitted that the Commissioners' decision was correct, and that there is no discretion allowed to the Commissioners by the statutory provisions which enables them to repay VAT when a claim is made out of time.

13. The Appellant for its part does not dispute what has happened. It argues that there were what it describes as extreme reasons why there was such a long delay in making the 06/06 return (including mental health problems of the principal shareholder and managing director of the Appellant and his consequent prolonged absence from the business; the incompetence of staff with regard to financial record-keeping; staff illness; and the incompetence of the external accountant engaged by the Appellant during the managing director's absence from the business). It also argues

that although Miss Puree had frequent discussions with officers of the Commissioners, at no time did they warn her that there was a statutory deadline by which a claim for overpaid tax had to be made, or that the VAT return for 06/06 should be submitted within such a deadline in order to make such a claim. Had the Appellant been made aware of such matters it would have submitted an estimated return within the prescribed period in order to secure the repayment.

14. The law relating to repayment of overpaid VAT is to be found in section 80 VATA1994, the relevant parts of which for this appeal are as follows:

(1A) *Where the Commissioners -*

(a) *have assessed a person to VAT for a prescribed accounting period (whenever ended), and*

(b) *in doing so, have brought into account as output tax an amount that was not output tax due,*

they shall be liable to credit the person with that amount.

...

(2) *The Commissioners shall only be liable to credit or repay an amount under this section on a claim being made for the purpose.*

...

(4) *The Commissioners shall not be liable on a claim under this section -*

(a) *to credit an amount to a person under subsection...(1A) above, or*

(b) ... ,

if the claim is made more than 4 years after the relevant date.

(4ZA) *The relevant date is -*

...

(d) *in the case of a claim by virtue of subsection (1A) above ..., the end of the prescribed accounting period in which the assessment was made;*

...

(6) *A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.*

(7) *Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.*

15. There are regulations, made pursuant to Section 80(7) VATA 1994, which specify that a claim under section 80 VATA1994 is to be made in writing to the Commissioners, and must state the amount of the claim and the method by which it was calculated. In this case the Commissioners accepted the VAT return for 06/06

made by the Appellant as such a claim. The Appellant does not contend that it had previously made any other communication with the Commissioners which might be considered a claim for these purposes.

5 16. The position in law as it applies to this case is quite clear. The Commissioners, by the automated assessment made on 11 August 2006, assessed the Appellant to VAT for the accounting period 06/06 and in doing so brought into account as output tax an amount, £4,772.05, that was not, as it transpired, output tax. Under section 80(1A) VATA 1994 they are liable to credit the Appellant with that amount, but only if the Appellant makes a claim to the Commissioners in the form required by them
10 (see section 80(2) and (6) VATA 1994).

15 17. However, the Commissioners are not liable to credit the Appellant with the amount of overpaid VAT if the claim made under section 80(2) VATA 1994 is made more than four years after the relevant date (see section 80(4) VATA 1994). In the Appellant's case, because the assessment which gave rise to the overpaid tax was made in the Appellant's VAT accounting period 09/06, the relevant date is four years after 30 September 2006, that is, 30 September 2010 (see section 80(4ZA)(d) VATA 1994). The Appellant's claim (which took the form of its VAT return for the 06/06 period) was made on 12 April 2011, and therefore was made more than four years after the relevant date.

20 18. It is therefore the case that the Commissioners are not liable to repay the overpaid VAT to the Appellant, and their decision refusing to make such repayment is correct. The terms of section 80 VATA 1994 are clear and explicit, and they alone determine whether or not a repayment can be made, as section 80(7) VATA 1994 makes clear. No discretion is given by the statute to the Commissioners to vary this
25 rule to allow them to repay overpaid VAT if a claim is made after the four year period, however deserving a taxpayer's case may be. Unlike certain other instances in the VAT legislation where a taxpayer has failed to comply with a time limit, in the case of a claim for overpaid VAT under section 80 VATA 1994 there is no provision which allows the Tribunal to step in to decide that there is a reasonable excuse for the
30 taxpayer's failure to take action so that the time limit can be set aside.

35 19. The four year limitation period, in such absolute terms, is enacted to provide legal certainty: there has to be a point of cut off or finality beyond which a claim, whatever the circumstances, cannot be acted upon or enforced in law. Such limitation periods apply not only in the field of tax law, but across every field of law in one form or another, and for varying periods. With regard to the four year period applicable in this particular case, it is well-established in law that it is reasonable to have such a point of finality, and that four years is a reasonable period within which a claim for repayment of overpaid VAT must be made before the claim is time-barred. The Appellant cannot therefore challenge the limitation period on the grounds that it is
40 contrary to fundamental legal principles.

20. For these reasons the Appellant's appeal fails and has to be dismissed.

21. As is clear both from the correspondence and from Miss Puee's submissions at the hearing, the Appellant's real grievance is that it was not notified that there was a four year limitation period in which it had to submit its 06/06 return or otherwise make a claim for the overpaid tax assessed in the automated assessment. This is a matter which the Appellant is pursuing with the Complaints unit of the Commissioners. It is not a matter for the Tribunal as it is not a question of law - there is no requirement in law that the Commissioners should notify taxpayers of limitation periods or of the consequence of failing to act within such periods.

22. I have not been presented with all the relevant facts in relation to the conduct of the various officers of the Commissioners in this case, but from what I have seen from the correspondence between the Appellant and the Complaints unit of the Commissioners there is nothing in the conduct of the officers which would lead me to suggest to the Appellant that it should consider taking judicial review proceedings against the Commissioners with regard to such conduct and the decision of the Commissioners to refuse repayment of the overpaid tax.

23. 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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**EDWARD SADLER
TRIBUNAL JUDGE**

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RELEASE DATE: 21 May 2012