



TC02057

Appeal number: TC2011/0382

VAT – ASSESSMENT – Unexplained discrepancies between SAGE records and VAT returns – No evidence substantiating some of the Appellant’s input tax claims – Assessment derived from the figures in the SAGE records – HMRC’s assessment rational and reasonable – Misdeclaration penalty correctly calculated – no mitigating circumstances – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MATTHEW GRANGER

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE
 MARY AINSWORTH**

**Sitting in public at 3rd Floor Alexandra House, 14-22 The Parsonage, Manchester
M3 2JA on 25 April 2012**

**The Appellant did not appear (Wayne Granger, the Appellant’s father attended
for the preliminary application but withdrew from the substantive hearing)**

John Nicholson advocate for HMRC

DECISION

The Appeal

1. The Appellant appealed against the following assessments for VAT and a misdeclaration penalty:

- 5 (1) Assessment issued on 7 December 2007 for £12,609 plus interest
- (2) Assessment issued on 7 May 2008 for £36,933 plus interest.
- (3) Assessment issued on 19 June 2008 for £2,106 plus interest.
- (4) Assessment issued on 8 September 2008 for £18,886 plus interest.
- 10 (5) Assessment issued on 22 September 2009 for £2,766 repayment to the Appellant.
- (6) Misdeclaration penalty for £1,388 for period 05/05 dated 9 October 2008.

2. At the time of the assessments the Appellant had two businesses, one as a sole trader under the name of XL Transport and another called XL Transport Limited of which he was a director. The assessments related to solely to his unincorporated
15 business, XL Transport.

3. The Appellant had appointed Mr Kevin Settle as his representative. Mr Settle was employed as the Transport Manager and book-keeper for the Appellant's businesses. Mr Settle had applied to adjourn the hearing on the ground that he had not received any notification from the Tribunal for over a year until he was sent HMRC's
20 hearing bundle about one week before the hearing. A judge refused the application but advised that he could renew the application before this Tribunal.

4. The Appellant's father attended the hearing to make the adjournment application. The Tribunal permitted him to make the application even though his son and representative were not in attendance. HMRC did not object to the father
25 representing his son for the purposes of the preliminary application. The Tribunal reserved its position on whether it had the necessary authority under rule 11 of the Tribunal Rules 2009 to authorise the father as his son's representative in the substantive proceedings.

5. The father repeated Mr Settle's assertion made prior to the hearing that the
30 Tribunal did not contact him for over a year. In those circumstances the Appellant had had insufficient time to prepare for the hearing. The father explained that Mr Settle was unable to attend the hearing because of work commitments, which was corroborated by a letter from his new employers. Further the Appellant was too ill to appear before the Tribunal. HMRC objected to the adjournment request pointing out
35 that the Appellant had been given ample opportunities to provide the necessary documentation, and that the Appellant had over 15 months since the notification of the review decision in December 2010 to prepare his case. HMRC added that this was a straightforward case concerned solely with a factual dispute.

6. The Tribunal refused the Application for adjournment because:

5 (1) The Tribunal did not accept Mr Settle's assertion regarding the lack of contact for over a year. The Tribunal's file showed that seven letters on different dates starting with 20 January 2011 in connection with the Appeal had been posted to Mr Settle at his correct address. The letter of 1 February 2012 advised Mr Settle that the Tribunal was ready to list the Appeal, whilst the letter of 6 March 2012 gave him notice of the hearing.

10 (2) The Tribunal was satisfied that the Appellant was fully aware of the basis for the assessment. He had provided no explanation for the discrepancies between the VAT recorded on his Sage accounts and the VAT returns. The Appellant had been given various opportunities to supply the requisite invoices to substantiate the denied input tax claims, which he had failed to do.

(3) Almost 14 months had elapsed since the making of the Appeal.

(4) HMRC was ready to proceed with its witness in attendance.

15 7. After the Tribunal announced its decision refusing the adjournment, the Appellant's father withdrew from the proceedings but remained in the hearing room. In any event the Tribunal was of the view that he was unable to represent his son because of the requirements of rule 11 of the Tribunal Rules 2009.

8. HMRC applied for the proceedings to be heard in the absence of the Appellant pursuant to rule 33 of the Tribunal Rules 2009, which was granted by the Tribunal.

20 9. The Tribunal was satisfied that the Appellant's representative had been duly notified of the date, time and place of the hearing by letter dated 6 March 2012. The Appellant was aware of the proceedings as evidenced by the attendance of his father. The Tribunal decided it was in the interests of justice to proceed in the absence of the Appellant for the reasons given in paragraph 6 above.

25 10. The Tribunal heard evidence from Mrs Woolley for HMRC and received a bundle of documents. Mrs Woolley was the Officer who made the disputed assessments. The Appellant's father remained in the Tribunal room throughout the hearing. The father had a copy of the documents bundle and was permitted by the Tribunal to ask a question.

30 **The Facts**

35 11. On 13 November 2007 Mrs Woolley carried out a routine VAT visit of the Appellant's registered principle place of business. Mrs Woolley undertook a reconciliation of the output and input tax declared on the VAT returns and the VAT reports on the Appellant's SAGE accounting package. Mrs Woolley found that the output tax and the input tax declared in the VAT returns for periods 05/05, 02/06 and 05/06 did not correspond with that recorded in the SAGE reports. Mrs Woolley informed the Appellant of the discrepancies and requested further information for periods 11/04 to 08/07 which was provided on the 14 January 2008. Mrs Woolley identified the same discrepancies in periods 08/06 to 08/07 (inclusive).

12. Mrs Woolley's investigation revealed that the value of output tax recorded in the SAGE reports exceeded that declared in the VAT returns in the following amounts.

Period	Output Tax Discrepancy (£)
05/05	2,082
02/06	1,468
05/06	3,080
08/06	4,745
11/06	2,723
02/07	4,468
05/07	1,371
08/07	9,773

5 13. The Appellant has not provided an explanation for the discrepancies between the output tax recorded in the SAGE reports and that declared in the VAT returns for the said periods.

10 14. Mrs Woolley's investigation of the Appellant's input tax claims for the periods 05/05 to 08/07 comprised two stages. First she identified the variations between the input tax recorded in the SAGE reports and that declared in the VAT returns. In all the periods except 05/06 the amount of input tax due in the SAGE accounts was less than that claimed in the VAT returns. In respect of 05/06 Mrs Woolley preferred the higher figure for input tax recorded in the SAGE report which worked to the benefit of the Appellant.

15 15. The second stage of Mrs Woolley's enquiry was to verify whether the figures given for the input tax due in the SAGE reports were evidenced by VAT invoices. Mrs Woolley found that in many instances there was no VAT invoice to substantiate the input tax due in the reports. In periods 11/06 and 02/07 several invoices were not addressed to the Appellant but to XL Transport Limited, a different legal entity. Mrs
20 Woolley disallowed the claims for input tax not substantiated by VAT invoices and those supported by invoices in the name of XL Transport Limited.

25 16. On 7 May 2008 Mrs Woolley issued an assessment in the sum of £43,292 for the periods 08/06 to 08/07 inclusive. On 23 May 2008 Mrs Woolley issued a protective assessment in the sum of £13,779 for the periods 05/05, 02/06 and 05/06. The amounts specified in these assessments were derived from the discrepancies

identified by Mrs Woolley between the figures recorded in the SAGE accounts and the VAT returns.

17. Mrs Woolley issued two further assessments relating to her decision to disallow input tax claims not substantiated by VAT invoices. They were on 19 June 2008 (date of calculation 22 May 2008) in the sum of £2,106 for period 05/05, and on 8 September 2008 in the sum of £18,886 for periods 02/06 to 02/07 inclusive.

18. On 22 September 2009 Mrs Woolley amended the assessments dated 7 May 2008 and 23 May 2008 by reducing the amounts due to £12,609 and £36,933 respectively. Mrs Woolley took this course of action after considering additional evidence supplied by the Appellant in respect of his input tax claims. Mrs Woolley also issued a new assessment for period 08/07 for the repayment of £2,766 to the Appellant.

19. On the 10 September 2010 Mrs Woolley met with Mr Settle and Mr Granger's father. Mr Settle produced seven purchase invoices from XL Transport Limited to the Appellant on which a total of £53,833 in VAT had been incurred. Mr Settle insisted that these invoices represented the monies paid by XL Transport Limited for supplies made to the Appellant. Mrs Woolley rejected the invoices as evidence to substantiate a claim by the Appellant for the VAT incurred in the sum of £53,833. Her reasons for rejecting the Appellant's claim were that XL Transport Limited was not entitled to charge VAT on four of the seven invoices which were dated prior to its effective date of VAT registration on 1 February 2007 and that XL Transport Limited had supplied no compelling evidence of payment of the VAT on the supplies by the customers. Finally XL Transport Limited after registration had not declared any output tax. Its first VAT return was a nil return after which it had not submitted any returns. XL Transport Limited was now insolvent with a debt of £78,934.89 as at 30 March 2012.

20. On 9 October 2008 Mrs Woolley issued three misdeclaration penalties for periods 05/05, 02/06 and 02/07. The last two penalties were quashed on review because the amount of the error did not equal or exceed 30 per cent of the gross amount of the tax due on the return. In respect of period 05/05 the error made equated to 32 per cent of the tax due which resulted in a penalty of 15 per cent of the tax due (£9,257) equalling £1,388. Mrs Woolley decided that there were no grounds to mitigate the penalty describing the Appellant's co-operation with her enquiries as spasmodic.

Reasons

21. Section 73(1) of the Value Added Tax Act 1994 gives HMRC authority to issue assessments for VAT when specific circumstances apply:

“Where a person has failed to make any returns required under this Act ... or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him”.

22. Under section 73 HMRC is required to consider fairly all material placed before it by a tax payer and on that material, come to a decision which is reasonable and not arbitrary as to the amount of tax due. HMRC is under no obligation to do the work of the tax payer by carrying out an exhaustive investigation of the tax payer's VAT returns and accounting journals.

23. Under section 25 of the VAT Act 1994 a taxable person is entitled at the end of each accounting period to credit for input tax paid on taxable supplies of goods or services made by a taxable person. Section 24(6)(a) of the 1994 Act enables Regulations to be made which provide for VAT to be treated as input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the Regulations or the Commissioners may direct either generally or in particular cases or classes of cases. Regulation 29(2)(a) of the VAT Regulations 1995 requires a taxable person to hold a VAT invoice for the supply from another taxable person, in respect of which a claim for input tax is made. Regulation 14(1) of the 1995 Regulations specifies the contents of a VAT invoice.

24. Where a tax payer understates his liability to pay VAT that exceeds 30 per cent of the gross amount of VAT for that period he is liable to pay a misdeclaration penalty representing 15 per cent of the VAT which would have been lost if the inaccuracy had not been discovered (section 63(1) of the VATA 1994). Under section 63(10) a tax payer can avoid the penalty if he can demonstrate a reasonable excuse or that he furnished HMRC with full particulars of the error at a time when he had no reason to believe that enquiries were being made in his tax affairs by HMRC. Under section 70 the Tribunal has power to reduce the penalty to such amount including nil as it thinks proper.

25. The Tribunal finds the following facts in relation to this Appeal:

- (1) The time limits for making the disputed assessments were met.¹
- (2) The assessments were derived from the figures for output and input tax in the SAGE accounting records compiled by the Appellant.
- (3) The Appellant did not offer an explanation for the discrepancies between the figures recorded in the SAGE accounting records and those in the VAT returns.
- (4) The Appellant was given various opportunities to supply Mrs Woolley with the requisite invoices to substantiate the input tax claims.
- (5) Mrs Woolley reduced the assessments where the Appellant adduced the necessary evidence for an input tax claim.
- (6) The amounts in the amended assessments relating to input tax claims consisted of those claims not evidenced by a VAT invoice.

¹ The date of calculation for 19 June 2008 assessment 05/05 period was on 22 May 2008 within the three year period.

(7) The seven purchase invoices from XL Transport Limited produced at the 10 September 2010 meeting did not constitute evidence for a VAT repayment claim by the Appellant. The Tribunal adopts the reasons given by Mrs Woolley in paragraph 19 above.

5 (8) The Appellant had understated his liability to pay VAT in the 05/05 return and, therefore, liable to pay a penalty of 15 per cent of the VAT due.

(9) The misdeclaration penalty of £1,388 for period 05/05 was correctly calculated. The Appellant offered no reasonable excuse for the error in his VAT return. There were no mitigating circumstances to reduce the penalty.

10 26. The Tribunal's findings of fact demonstrated that the assessments were derived from the Appellant's SAGE accounting records. The Appellant at no time has challenged the correctness of the figures given in the SAGE reports. The Appellant's dispute with the assessments was that he was entitled to recover the VAT disallowed by Mrs Woolley because he had paid for the supplies which gave rise to the
15 repayment claims during the relevant periods. Mrs Woolley's investigation, however, revealed that there was no evidence of valid VAT invoices for the disputed input tax claims. The Tribunal finds that Mrs Woolley carried out her duty under section 73 of the 1994 Act of considering the information placed before her and coming to a decision which was reasonable and not arbitrary as to the amount of tax due. The
20 Tribunal is satisfied that the assessments were correct.

27. The facts showed that the Appellant had understated the VAT due in period 05/05 and liable to a misdeclaration penalty of 15 per cent of the understated tax. There were no mitigating circumstances to reduce the penalty.

Decision

25 28. For the reasons given above the Tribunal dismisses the Appeal and upholds the assessments and the misdeclaration penalty as set out in paragraph 1 above.

29. 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
30 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.

30. As the Appeal was heard in the Appellant's absence the Appellant may also
35 apply for the decision to be set aside provided he makes application in writing to the Tribunal within 28 days from the date of this decision.

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TRIBUNAL JUDGE

RELEASE DATE: 10 May 2012