



**TC02248**

**Appeal number: TC/2011/00576**

**VAT – ASSESSMENT – *Input tax claims not supported by invoices or other documentary evidence – assessment based on figures provided by the Appellant and reasonably arrived at – Appeal dismissed – Assessment confirmed.***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DAVID JAMES CUMMAFORD  
ABCOMA LTD**

**Appellants**

**- and -**

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

**Respondents**

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

**Sitting in public at 3<sup>rd</sup> Floor, Alexandra House, 14-22 The Parsonage,  
Manchester M3 2JA on 20 August 2012**

**The Appellant did not appear**

**Susan Ellwood, Presenting Officer, for HMRC**

## DECISION

### The Appeal

1. The Appellant appealed against an assessment for VAT in the sum of £360,021.00 for 02/07, 08/07, 11/07, 02/08 and 05/08 VAT periods which was issued on 30 October 2009.

2. The assessment concerned input tax claims for which the Appellant has produced no purchase invoices or other evidence of entitlement to deduct the said input tax. The Appellant argued that he was unable to produce the necessary evidence because they were destroyed in a helicopter crash. The Appellant did not understand how HMRC could have assessed to such a high figure. The Appellant considered that the assessment figure was pure guesswork and did not make sense against the accounts filed at Companies House.

3. HMRC contended that the Appellant was not entitled to the input tax claimed unless he produced invoices or other documentary evidence substantiating the claim. HMRC had given the Appellant several opportunities to supply the requisite evidence but had failed to do so. HMRC stated that it had acted fairly and reasonably in arriving at the amount assessed. Given those circumstances HMRC submitted that the Appeal should be dismissed.

4. The Notice of Appeal was originally submitted in the name of Abcoma Limited. On 29 March 2011 the Tribunal directed that Mr Cummaford be added as a party to the Appeal. The disputed input tax claims were made in the VAT returns with the VAT registration number 562 4946 20 which was registered under the name of Mr David Cummaford trading as a sole proprietor as D M Engineering. HMRC held no evidence to suggest that Mr Cummaford changed the taxable status of the business from a sole proprietorship. Mr Cummaford has used the trading styles of Abbey Design and Abcoma Limited to conduct his business. Abcoma Limited has not been registered for VAT and not filed a tax return since 2004. The assessment was issued in the name of Mr Cummaford. The Tribunal decides that Abcoma Limited has no standing in this Appeal.

5. The Appellant did not appeal HMRC's decisions amending the VAT returns for 08/08, 08/09 and 11/09 periods. The amendment to 08/08 return resulted in VAT payable of £7,907.21 instead of a repayment claim of £104,870.99. The 08/09 and 11/09 returns were reduced to nil.

### The Hearing

6. The Appellant did not attend the hearing on 20 August 2012. On 17 August 2012 at 14:55 hours he e-mailed the Tribunal with a copy to HMRC stating that

“I was under the impression that the hearing was against Abcoma Limited which has unfortunately been liquidated on 28 May 2012.

I have no access to any company information and do not have the bundle sent to us by yourselves as all files were in cabinets taken by the bailiffs.

I have lost all my assets during the last few months and being disabled I don't have much opportunity of regaining anything in the near future.

I don't know what to do about the hearing. I am recovering from another operation at the moment and have very little mobility and I am a wheelchair user and don't think I can arrange transport to Manchester at this late stage.

Please let me know what I can do".

7. HMRC applied for the Appeal to be heard in the absence of Mr Cummaford in accordance with rule 33 of the Tribunal Rules 2009. The Tribunal granted the application. The Tribunal was satisfied that the Appellant was notified of the hearing. On 2 May 2012 the Tribunal sent a notice of hearing for 20 August 2012 by ordinary post to Abcoma Limited, 14b Nile Street, Stoke on Trent ST6 2AF. On 20 July 2012 HMRC contacted Mr Cummaford by e mail reminding him that the bundle of documents sent out to him in March 2012 would be required for the hearing. Mr Cummaford was clearly aware of the hearing date as evidenced by his e mail of 17 August 2012.

8. The Tribunal was satisfied that it was in the interests of justice to proceed with the hearing:

(1) HMRC accepted that Mr Cummaford had incurred serious injuries from a helicopter crash in 23 July 2008 which had a deleterious effect on his mobility. The precise nature of his injuries was unknown. Mr Cummaford referred to himself as a paraplegic. The report on the crash stated that he had broken a leg in two places. Mr Doyle, the assessing officer, met Mr Cummaford at the Oldham premises on 18 September 2009 who according to Mr Doyle was walking albeit slowly. Mr Cummaford attended the case management hearing on 29 March 2011. In the Tribunal's view there was no compelling evidence that Mr Cummaford's disability prevented his attendance at the hearing.

(2) HMRC and the Tribunal have extended considerable latitude to Mr Cummaford with the conduct of his dispute. HMRC agreed to undertake an independent review of the assessment on 26 November 2010 even though Mr Cummaford submitted his application almost 12 months after the disputed decision. He submitted the Notice of Appeal late. On 29 March 2011 the Tribunal extended the time limit for submission of the Appeal. On 23 March 2012 the Tribunal postponed the hearing of the substantive appeal. Mr Cummaford had informed the Tribunal on 14 March 2012 that he was ill and would not be able to attend until August 2012. HMRC did not object to the postponement.

(3) The Tribunal does not accept Mr Cummaford's assertions that he did not receive HMRC's bundle of documents and that he was under the impression the Appeal solely concerned Abcoma Ltd. Mr Cummaford was present at the directions hearing on 29 March 2011 when he was made a party to the Appeal.

HMRC's documentation: statement of case (served 30 August 2011), list of documents (served 6 October 2011) and bundle (15 March 2012) bore the heading *David Cummaford (Abcoma Ltd)*. HMRC sent its bundle track and trace on 15 March 2012 to Mr Cummaford at his business address. The bundle was signed for by *Hughes*. On 20 July HMRC sent Mr Cummaford an e mail reminding him that the bundle of documents had been sent out.

(4) HMRC gave Mr Cummaford various opportunities to produce the requisite evidence to substantiate the disputed input tax claims. Mr Cummaford has failed to avail himself of those opportunities.

(5) Mr Cummaford's case as set out in the Notice of Appeal and various correspondence was not strong.

(6) Mr Cummaford advanced no reason why it was necessary to adjourn the hearing. There was no suggestion that the adjournment would benefit his case.

(7) HMRC was in a position to proceed with its witness in attendance.

9. The Tribunal heard testimony from Mr Doyle, the assessing officer and admitted the bundle of documents in evidence. At the end of the hearing the Tribunal reserved its decision.

### **Reasons**

10. 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 HMRC 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.

11. Under Regulation 29(2) of the 1995 Regulations HMRC is given the power to require a taxable person to hold or provide such other evidence in support of a claim for input tax. HMRC has issued a Statement of Practice (SP 7/2003) effective from 16 April 2003, regarding the circumstances in which input tax recovery will be allowed in the absence of a valid VAT invoice.

12. The following conditions must, therefore, be met for input tax credit to be available:

- a supply must have taken place;
- the input tax credit must be claimed by the taxable person to whom the supply is made,
- the supply must be chargeable to tax at the rate claimed;

- the claimant must hold satisfactory evidence of his entitlement to input tax credit.

13. Section 73 of VAT Act 1994 empowers HMRC to raise assessments for unpaid VAT where it appears to them that the taxpayer's returns are incomplete or incorrect or to recover VAT which has been wrongly repaid or credited as input tax to the taxpayer.

14. Under section 73 HMRC is required to consider fairly all material placed before them by the Appellant, 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 Appellant by carrying out an exhaustive investigation of the Appellant's VAT returns and accounting journals.

15. The Tribunal finds the following facts:

(1) The Mr Cummaford's business concerned the design and manufacture of self adhesive coating machines. Mr Cummaford also sold new and used machines.

(2) Mr Cummaford's VAT returns from 11/04 to 08/08 were repayment claims ranging from £1,191.85 (08/05) to £104,870.99 (08/08). The total repaid to the Appellant excluding period 08/08 was £506,199.38.

(3) In view of the continuous repayments Mr Doyle of HMRC contacted Mr Cummaford on 13 October 2008 by phone to arrange a visit to examine the books and records in relation to his repayment claim for 08/08. After considerable exchange of correspondence and e-mails between the parties Mr Doyle visited the business premises on 29 April 2009. Mr Cummaford and his secretary were not present. Mr Doyle inspected the premises, which showed that Mr Cummaford was involved in the manufacturing and refurbishing of machinery relative to packaging and laminating. Mr Doyle, however, disagreed with Mr Cummaford's valuation of the business at £4 million. Mr Doyle considered it lower having regard to the small amount of stock held and the dilapidated state of the machinery. The business records inspected by Mr Doyle were incomplete.

(4) On 1 May 2009 Mr Doyle requested Mr Cummaford to produce invoice evidence to support the input tax claims in respect of the VAT returns 02/07, 08/07, 11/07, 02/08 and 05/08. The total amount of input tax claimed on those returns was £431,915.77. In an e-mail response to a letter from Mr Cummaford in June 2009, Mr Doyle repeated his request for documentary evidence to support the input tax claims. Mr Doyle also warned Mr Cummaford that if no documentary evidence was forthcoming a large percentage of the input tax claimed on the said returns would be disallowed. On 18 September 2009 Mr Doyle arranged another visit to Mr Cummaford's premises in an attempt to resolve the dispute. Mr Cummaford indicated that he would get everything ready by 17 August 2009.

(5) At the visit on 18 September 2009 Mr Cummaford produced copies of six sales invoices dated from 4 January 2007 to 19 March 2008 but no bank

statements or any other documentary proof of payment by the customers. Mr Cummaford also informed Mr Doyle that he was involved in the supplies of services and drawings not with supplies of goods, which was contrary to what Mr Cummaford had been informing HMRC since the start of Mr Doyle's investigation in October 2008. Mr Cummaford also supplied six pages of Abcoma's abbreviated final accounts for 30 June 2008. There was no profit and loss account with the papers which appeared to have been ripped out making a comparison exercise with the VAT returns impossible. The figures recorded in the six pages included £1,016 (cash in bank), £14,699 (work in progress), £19,250 (debtors) and £6,876 (creditors). Mr Doyle formed the view from the figures that they did not reflect a multi million dollar manufacturing or design enterprise as portrayed by Mr Cummaford. No evidence was supplied to justify the input tax claims made for the disputed periods.

(6) Mr Doyle decided to issue a pre-assessment letter in respect of the disputed periods. Mr Doyle was satisfied that the Appellant's business would have incurred input tax but not to the level claimed on the VAT returns for the contested periods. Mr Doyle also accepted that the business was predominantly an export trader and would, therefore, be a repayment trader. He decided that the net repayment for each quarter would be a £1,000 which resulted in the following adjustments to the input tax claimed:

<b>Period</b>	<b>Input Tax Claimed (£)</b>	<b>Input Tax Allowed (£)</b>	<b>Input Tax Disallowed (£)</b>
02/07	93,214.12	10,432.28	82,781.84
08/07	47,538.42	11,717.16	35,821.26
11/07	62,157.94	13,339.81	48,818.13
02/08	106,984.75	9,677.50	97,217.25
05/08	122,110.54	26,726.29	95,384.25

(7) The total amount of input tax disallowed was £360,021.00 which formed the basis of the assessment. The rationale of allowing part of the input tax claimed so as to produce a repayment of £1,000 was based on Mr Doyle's assessment of the business activity and that the repayments made for other periods ranged from £1,191.85 to £11,128.26. Mr Doyle did not amend the return for 05/07 because the amount of the repayment was £2,538.00 which was within the boundary of probabilities for a business of this nature.

(8) In the pre-assessment letter of 21 September 2009 Mr Doyle allowed Mr Cummaford 14 days to supply all or some of the invoices to support his input tax claims for the said periods. Mr Cummaford failed to produce the invoices or any other documents supporting the amounts claimed for input tax.

(9) On 30 October 2009 Mr Doyle issued Mr Cummaford with an assessment for unpaid VAT in the value of £360,021.

(10) Mr Cummaford has given contradictory accounts to HMRC for why he was unable to produce the required invoices to substantiate the input tax claims for the said periods. In 2007 Officer Hall was asked to carry out a visit to examine Mr Cummaford's books and records. The visit did not get off the ground because Mr Cummaford claimed the business records on a lap top were stolen and he was hospitalised the day before the visit was arranged to commence. When Mr Doyle began his investigation in October 2008 Mr Cummaford informed him on 17 October 2008 that he had a severe accident from a helicopter crash and that his 08/08 records were located in various places, his car, his office, at his accountants and at his home. On 27 October 2008 Mr Cummaford changed his mind and stated that his accounts were with him in the helicopter when it crashed and that the records had been disposed of by the insurance company along with the helicopter wreck.

16. The legislation requires Mr Cummaford to produce a VAT invoice or other documentary evidence to substantiate his claims for input tax for 02/07, 08/07, 11/07, 02/08 and 05/08 period. He failed to do so despite being given various opportunities to do so. Mr Cummaford has given contradictory and unconvincing explanations for his failure to provide the requisite evidence. The Tribunal is, therefore, satisfied that Mr Cummaford was not entitled to the amounts claimed in input tax for the said periods.

17. Under section 73 of the 1994 Act HMRC was entitled to assess Mr Cummaford for the input tax wrongly credited to him. Mr Doyle calculated the amount due under the assessment by starting with the figures for input tax declared by Mr Cummaford in the said returns. Mr Doyle was entitled to disallow the whole amount of the input tax claimed but instead he allowed part of the input tax because a business was being carried out albeit not to the scale claimed by Mr Cummaford. Mr Doyle's decision as to the amount assessed was reasonable and based on a clear rationale.

### **Decision**

18. The Tribunal dismisses the appeal and confirms the assessment in the name of David James Cummaford in the sum of £360,021.00.

19. 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.

**MICHAEL TILDESLEY, OBE  
TRIBUNAL JUDGE**

**RELEASE DATE: 29 August 2012**