



TC02758

Appeal number TC/2012/08810

VALUE ADDED TAX – Cancellation of registration – whether an application stating a deregistration date of 20 December 2008 was received before that date – held it was – whether the appellant not liable to be registered with effect from that deregistration date – held she was not so liable – appellant’s appeal against decision not to deregister her with effect from that deregistration date allowed – paragraph 13, Schedule 1, VAT Act 1994 applied

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DEBORAH LISBETH LA ROCHE

Appellant

- and -

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

Respondents

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

Sitting in public in London on 10 June 2013

**The Appellant in person
Martin Priest, Officer of HMRC, for the Respondents**

DECISION

- 5 1. This is an appeal against the refusal by the Respondents (“HMRC”) to cancel the VAT registration of the appellant, Miss La Roche, with effect from a date earlier than 18 February 2012. Miss La Roche contends that the registration should have been cancelled with effect from 20 December 2008.
- 10 2. We had before us an agreed bundle of documents and Miss La Roche (informally) gave evidence before us on which Mr Priest, for HMRC, chose not to cross-examine her. We were entirely satisfied that Miss La Roche’s evidence was truthful.
3. From the evidence, we find the following facts.
- 15 4. On 5 May 2000, Miss La Roche bought a high street second-hand curtain retail business based in Marlborough. She assumed the same VAT registration number under which the vendor of the business had been registered because her acquisition of the business was a ‘transfer as a going concern’. She was registered for VAT as ‘Ms La Roche trading as Curtain Traders, 123 High Street, Marlborough’.
- 20 5. Until July 2008 she traded without (we understand) any difficulties, but in July 2008 she was hospitalised, suffering from pneumonia. She was told that it would take between 18 months and 2 years for her to recover. Although her staff had carried on operating the business in her absence, she realised that without her active involvement it could not be run successfully and on 20 December 2008 she
- 25 closed the shop.
- 30 6. She wrote a letter dated 8 December 2008 to HMRC enclosing a completed form VAT 7 (VAT – Application to cancel your VAT Registration), dated 7 December 2008. In the covering letter she stated why she was closing her business and that she had decided to close the shop on 20 December 2008 ‘and therefore will not have the turnover in the future that requires the business to be registered’.
- 35 7. In the form VAT 7 she stated that the value of taxable supplies she expected to make in the next 12 months (i.e. until December 2009) was £20,000. This was because she planned to (and did) move her unsold stock from the shop in Marlborough to a warehouse and planned to (and did) sell it as and when the opportunity arose.
- 40 8. She told us that the turnover of her business dropped from £67,631 in 2008 to £26,492 in 2009. In 2010 her turnover was £12,835.
9. In July 2010 she was sufficiently recovered to start a new business of selling bedroom furniture on commission. The receipts from that business comprise the commission she receives. The bedroom furniture is sold direct by the supplier to

Miss La Roche's customers. Miss La Roche's turnover for this business is well below the VAT registration threshold.

5 10. She sold her last second-hand curtains from the warehouse on 30 May 2009. After that she occasionally made curtains to order, and the last pair made was in February 2010.

11. We were told by Mr Priest, for HMRC, that HMRC never received Miss La Roche's application made in December 2008 to cancel her registration.

10 12. HMRC raised an assessment to VAT which was sent to the Marlborough shop address. Miss La Roche's former landlord telephoned HMRC on 3 December 2009 and (according to the record of the Contact Centre) stated that Miss La Roche had moved away from the premises a year previously (which was the case) and that he did not know her new address.

15 13. Some time later Miss La Roche received demands for VAT from HMRC (a collector of taxes). She contacted the collector of taxes who informed her that she was still registered for VAT and threatened her with prosecution and restraint of her goods.

20 14. Miss La Roche took advice at this stage. A statement of liabilities as at 22 August 2011 was with our papers. From the statement it appears that at that date HMRC's records indicated that Miss La Roche owed some £32,877 in assessed VAT, surcharges and interest, covering the periods from 1 July 2007 to 31 March 2011.

15. She made a payment of £2,575.72 on 5 December 2011 and sent in returns for the outstanding periods to December 2007.

25 16. Miss La Roche wrote to HMRC on 13 February 2012 applying to deregister retrospectively. At about that time she sent to HMRC further outstanding VAT returns. She stated in her letter that she had applied for deregistration in December 2008 when her shop closed. She also stated that she had not been informed that that application had not been accepted and that her turnover had been under the VAT threshold since December 2008.

30 17. In response, HMRC cancelled Miss La Roche's VAT registration, but with effect from close of business on 17 February 2012. She wrote to HMRC on 5 March 2012 repeating her request for retrospective deregistration. This was refused by a letter from HMRC dated 22 March 2012. The stated basis for the refusal was that HMRC received Miss La Roche's *first* application for
35 cancellation of her registration on 17 February 2012.

18. HMRC drew Miss La Roche's attention to the relevant provision of the VAT Act 1994, which is paragraph 13(1) of Schedule 1, which is in the following terms:

‘Subject to sub-paragraph (4) below, where a registered person satisfies the Commissioners that he is not liable to be registered under this Schedule, they shall, if he so requests, cancel his registration with effect from the day on which the request is made or from such later date as may be agreed between them and him.’

5 19. Sub-paragraph (4) of paragraph 13, Schedule 1, VAT Act 1994 states as follows:

‘The Commissioners shall not under sub-paragraph (1) above cancel a person’s registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement to be registered under this Act.’

10 20. Miss La Roche wrote again to HMRC on 16 April 2012. In that letter she repeated that she had applied for deregistration in December 2008.

21. On 16 August 2012 HMRC wrote to Miss La Roche following an internal review of the refusal to backdate the cancellation of her registration. Included in that letter were the following relevant passages:

15 ‘The essence of your review application is that HMRC should treat the deregistration date on the basis of the earlier application that is said to have been made.

But as you have noted in your letter of 16 April 2012, it would not have been accepted even if it had been received. An application to deregister on the grounds of reduced turnover needs to be evidenced.

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At the material time – that is December 2008 – a substantial number of VAT returns had not been sent in for the registration. The latest VAT return submitted was for the June 2006 period and later VAT periods – all at that time relating to the activity through the retail shop – were missing and – from September 2006 to December 2007 – were not received by HMRC until 21 November 2011. Returns for the periods March 2008 to December 2011 were then received on 1 February 2012.

25 The registration was clearly not in compliance with regulation 25(1) [of the VAT Regulations 1995 which requires VAT returns to be made regularly] and any application received in December 2008 would not have been accepted at the very least because VAT declarations relating to the retail shop were outstanding.’

30 22. At the hearing, Mr Priest, for HMRC, accepted that there was no legislative provision preventing HMRC from cancelling a VAT registration in a case where VAT returns were outstanding at the date when the registration was sought to be cancelled.

35 23. In their Statement of Case in this appeal, HMRC state that 20 December 2008 ‘is not a date previously requested’ by Miss La Roche for the cancellation of her registration. They accept that Miss La Roche ‘may have ceased to have a liability to be registered for VAT on 20 December 2008, when she closed her retail outlet’. They point out that Miss La Roche did not cease to be registrable by virtue of the fact that she continued to make taxable supplies after that date (which is not disputed). Their case as stated was that they could not cancel her registration with effect from 20 December 2008 unless she had ceased to be registrable on that date

(which she did not). On the basis that she continued to be registrable after that date because she continued to make taxable supplies, HMRC state that she ought (a) to have made an application to have her registration cancelled, and (b) to have been able to demonstrate that she was no longer liable to be registered.

5 24. The relevant provisions pursuant to which Miss La Roche might have demonstrated to HMRC in 2008 that she was no longer liable to be registered were paragraph 4(1) and (2), Schedule 1, VAT Act 1994.

25. Those provisions at the relevant time (December 2008) were as follows:

10 ‘(1) Subject to sub-paragraph (2) below, a person who has become liable to be registered under this Schedule shall cease to be so liable at any time after being registered if the Commissioners are satisfied that the value of his taxable supplies in the period of one year then beginning will not exceed £43,000.

15 (2) A person shall not cease to be liable to be registered under this Schedule by virtue of sub-paragraph (1) above if the Commissioners are satisfied that the reason the value of his taxable supplies will not exceed £43,000 is that in the period in question he will cease making taxable supplies, or will suspend making them for a period of 30 days or more.’

26. We find as a fact that as at 20 December 2008 (after she closed her shop on that day) Miss La Roche was able to satisfy any reasonable body of Commissioners that the value of her taxable supplies in the period of one year then beginning would not exceed £43,000, and that the reason for that was not that in that period of one year she would cease making taxable supplies or would suspend making them for a period of 30 days or more. Mr Priest told us that, as at 20 December 2008, HMRC ‘would not necessarily have been satisfied’ that Miss La Roche would thenceforth be trading below the VAT threshold, but he accepted that as at the date of the hearing of the appeal HMRC were so satisfied.

27. Mr Priest submitted that we should not allow Miss La Roche’s appeal because there had been no agreement with HMRC in December 2008 that she was then no longer liable to be registered for VAT. He referred the Tribunal to the earlier decisions in the appeals of *Peter Vass* (TC00510) (release date: 7 May 2010), in which the decisions in the earlier appeals of *Ian & Gaynor Tindsley (t/a Padway Nurseries)* (Decision No. 18571) (hearing date: 30 March 2004) and *Neil and Alma Grogan (t/a Vale Plus)* (Decision No. 16084) (hearing date 11 May 1999) had been followed.

35 28. The *Peter Vass* appeal involved similar facts to this appeal, although Mr Vass did not give evidence, as Miss La Roche has done, and he was represented by his accountant. That accountant had told the Tribunal that Mr Vass had signed an application to deregister on form VAT 7 in June 2008 and that he (the accountant) had personally taken the form to the post office and posted it but, unfortunately, he had not kept a copy of the form. He said he had later found out that the VAT registration number entered on the form had been incorrect by a transposition of digits. HMRC said (as is said in this appeal) that they had not received the form. An officer giving evidence said that HMRC had procedures to identify a taxable person when a form is received with a VAT number that cannot be recognised.

Eventually a new VAT 7 form was submitted by the accountant, asking for deregistration with effect from the same June date, but HMRC deregistered Mr Vass with effect from 27 October 2008 (the date of receipt of that form VAT 7) – deregistration was later backdated to 29 September 2008 on the basis of HMRC then having received an earlier indication of Mr Vass’s request to deregister.

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29. The basis of the Tribunal’s decision to dismiss the *Peter Vass* appeal was that on the balance of probabilities the Tribunal found that HMRC had not received the original form VAT 7, which the accountant said that he had sent in June 2008, indicating 30 June 2008 as the deregistration date. The evidence on the basis of which this finding was made was the fact that no copy of the original form VAT 7 had been retained and that there was only a file copy of a later letter the accountant said he had sent. Further, the Tribunal took account of the officer’s explanation of HMRC’s procedures on receiving a form with a VAT number that cannot be recognised.

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30. This appeal is to be distinguished from *Peter Vass* on the basis that we find as a fact that Miss La Roche did indeed send a VAT form 7 with a covering letter to HMRC on 8 December 2008, asking for deregistration with effect from 20 December 2008 (when she planned to (and did) close the retail shop) and, on the balance of probabilities, that letter and VAT form 7 were received by HMRC and, presumably, mislaid by them.

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31. This appeal is brought pursuant to section 83(1)(a) VAT Act 1994, which provides that an appeal lies to this Tribunal ‘with respect to ... the registration or cancellation of registration of any person under this Act’. Those words are very general and Mr Priest did not dissent from the proposition that they give a full right of appeal against a decision not to cancel a registration at a particular date.

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32. Thus, having regard to the evidence we have heard, it is for us to decide whether or not it is reasonable for HMRC not to be satisfied that Miss La Roche was not liable to be registered with effect from 20 December 2008 and whether Miss La Roche made a request to cancel her registration at a time before 20 December 2008 – this is the effect of the legal tests set out in paragraph 13(1) and (4), Schedule 1, VAT Act 1994.

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33. We find that it is not reasonable for HMRC not to be satisfied that Miss La Roche was not liable to be registered with effect from 20 December 2008. We consider that this finding can and should be made on the basis of the evidence before us at the hearing, and that it is not a question of whether HMRC ought reasonably to have been so satisfied in December 2008. Clearly the legislation contemplates that HMRC will be satisfied of the relevant facts at a date later than the date on which the deregistration request is made (or received). The relevant protection to the revenue is that deregistration under paragraph 13(1), Schedule 1, VAT Act 1994 cannot take effect from a date earlier than the date on which the request is made.

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34. We have also found (see: above) that Miss La Roche did indeed make a request to cancel her registration by her letter dated 8 December 2008, covering the VAT form 7 dated 7 December 2008.

5 35. In the light of Miss La Roche's statement in the VAT 7 form and in her covering letter that she would be closing the shop on 20 December 2008 (which is what happened), we find that HMRC could not reasonably have been satisfied that the value of her taxable supplies in the succeeding 12 months would not exceed £43,000 (cf. paragraph 4(1), Schedule 1, VAT Act 1994) in relation to any date earlier than 20 December 2008. Accordingly, although Miss La Roche's request
10 within paragraph 13(1), Schedule 1, VAT Act 1994 was made on 8 December 2008, the period between 8 and 20 December was a period in relation to which deregistration could not have effect by reason of paragraph 13(4), Schedule 1, VAT Act 1994.

15 36. In the result, we allow Miss La Roche's appeal, holding that HMRC ought to have cancelled her registration with effect from 20 December 2008.

37. Mr Priest assured us that if it is the case that Miss La Roche has paid VAT on any supplies made after 20 December 2008, then, in the event of our deciding that she ought to have been deregistered with effect from 20 December 2008 (as we have decided), such VAT ought to be repaid to her.

20 **Right to apply for permission to appeal**

27. 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
25 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 **JOHN WALTERS QC**

TRIBUNAL JUDGE

RELEASE DATE: 19 June 2013

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