



TC02783

Appeal number TC/2011/09509

VALUE ADDED TAX – Cancellation of registration – whether registration correctly made originally – yes – whether cancellation of registration made effective from the correct date – no, it should have been effective from 11 June 2009 rather than 11 September 2009 because the appellant had made the request for cancellation on the earlier date – paragraph 13(1), Schedule 1, VATA 1994 applied – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

OLIVER'S VILLAGE CAFÉ LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JOHN WALTERS QC

Sitting in public in London on 12 October 2012

There was no representation by or on behalf of the Appellant

Philip Rowe, 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, Oliver’s Village Café Limited (“OVC”),
with effect from a date earlier than 11 September 2009. OVC contends that the
10 registration should have been cancelled with effect from 3 March 2008 (which
was the date from which OVC’s VAT registration took effect) because the
application to register was made in error. OVC also says that it did not apply for
the cancellation of its registration with effect from a date earlier than June 2009
because it was under the impression until that time that it was not actually
registered for VAT at all. The VAT in issue (partly assessed and partly due as per
VAT returns submitted by OVC) amounts in total to £7,683.34.

15 2. There was no appearance at the appeal by or on behalf of OVC. HMRC
applied to the Tribunal to proceed with the hearing in accordance with rule 33 of
the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the
Rules”). The Tribunal was satisfied that OVC had been notified of the hearing or
that reasonable steps had been taken to notify OVC of the hearing and that it was
20 in the interests of justice to proceed with the hearing and decided to proceed with
the hearing. The appeal had been made out of time but HMRC did not object to
the an extension of time to cure this defect and I therefore extended time for
making the appeal to the extent necessary to cause the appeal to be treated as if it
had been made in time.

25 3. I had before me a bundle of documents from which I find the following facts.

4. An application to register OVC for VAT was made online by Malcolm
McCulloch of Salter & Company, Chartered Accountants, 120 Long Acre,
London WC2. In that application it was stated that OVC’s business address was
92 Belsize lane, London NW3 5QU, that OVC intended to make taxable supplies
30 (as an unlicensed restaurant or café), that it estimated its taxable turnover in the
next 12 months to be £100,000, and that it wished its VAT registration to
commence from 3 March 2008. The application also gave details of a director of
OVC, Otto Chan.

35 5. A Certificate of Registration for VAT was issued in respect of OVC on 5
March 2008. It stated that the effective date of registration was 3 March 2008 and
that VAT returns were required to be made quarterly with the first return to be
made for the period ending 30 June 2008. It gave OVC’s postcode as ‘NW3 3JG’.
The certificate included the following wording:

‘Please check the above details are correct ...

40 You should inform the National Registration Service of any error or change in these details
....

If you need further advice and help please ring Customs and Excise National Advice Service'

5 6. There is a written record of an enquiry by telephone to the Contact Centre (National Advice Service) on 31 March 2008 by Dr Otto Chan, who spoke to agent David Nixon. The record states that Dr Chan wished to inform HMRC that the postcode (presumably OVC's postcode as per the Certificate of Registration) was incorrect and that the correct postcode was 'NW3 5BE'

10 7. There is also a handwritten letter from Dr Chan dated 31 March 2008 for the attention of the "Variations Unit" confirming this detail and requesting the Certificate of Registration to be altered to give the postcode as 'NW3 5BE'.

15 8. There is also a written record of an enquiry by telephone to the Contact Centre on 10 June 2009 by Malcolm McCulloch. He spoke to agent Sandra Dodd. The record states that Mr McCulloch had telephoned as OVC (his client) had received demand notices and assessments. Mr McCulloch is recorded as saying that he told the Contact Centre that he had applied online for VAT registration for OVC but had "never heard anything else" and that OVC "was not aware VAT registered". Mr McCulloch was advised to ask OVC to telephone.

20 9. There is a written record of Dr Chan telephoning the Contact Centre the next day, 11 June 2009. He spoke to agent Adrian Davey. Dr Chan is recorded as advising the Contact Centre that he had "just realised the business is VAT registered" and stating that he "would like to deregister from the date of registration". Dr Chan was told that this would be a matter for the deregistration unit and deregistration forms were ordered.

25 10. There is a written record of Natalie Chan telephoning the Contact Centre on 11 August 2009 and speaking to agent Matthew Pearce. The record states that she wanted to know who had registered OVC for VAT.

30 11. There is a written record of Dr Chan telephoning the Contact Centre on 2 September 2009. He spoke to agent Andrew Eddy. He was "chasing deregistration" but was advised that no VAT 7 (the form for applying for deregistration) had been received.

12. There is a written record of Dr Chan telephoning the Contact Centre on 9 September 2009 and speaking to agent Tom Jones. A deregistration pack was ordered for OVC.

35 13. There is a copy letter dated 9 September 2009 from Dr Chan, which was received by HMRC on 11 September 2009. It is in the following terms:

'Dear Sir/Madam,

Enclosed are VAT returns for the above premises [OVC]. There has been a lot of confusion, predominantly due to the fact that this is the 1st time that we have had a business/café.

We opened our shop on the 1st April 2008. At some point, one of us (my accountant, my daughter or me) must have filled in a VAT registration form, not realising the consequence. In particular, we did not know that there was a threshold and we thought that [it] was essential that all businesses registered for VAT.

5 As a consequence, we did not send off any VAT return forms for 1st April 2008 to 2009.

When it was brought to our notice that there was an outstanding VAT payment for this period, we wrote to our accountant. He didn't realise that we had registered and advised me to ask for us to be taken off the VAT register, as our 2008-2009 business was below the threshold. I therefore phoned and asked your department whether you could take me off the register and I was informed that we had to apply before we could be considered.

10 The application form that I filled in appears to have been lost in the post and I gather that you haven't received it. I phoned again on 2nd Sept and had a further discussion with an officer, who very kindly sent me a further application form but unfortunately I have still not received it (although there is a postal strike locally I gather). Could I request a further application form to be sent ASAP so that I can apply to have last year's VAT cancelled.

15 I have today received a demand for final notice requesting a sum of £3757 and when I spoke to your officer, he said that he would send another form, BUT that I should contact urgently The Debt Management Unit. When I contacted them to ask them to hold off the immediate payment notice till the VAT registration is clarified, they asked me to put it all in writing, even though it was already in the system.

20 Could I request that the Demand Notice for Immediate Payment is temporarily stopped till we find out whether we are eligible to be taken off the register, as we are a very small business that is unlikely in the foreseeable future to reach the threshold for paying VAT.

Yours sincerely,

25 Dr. Otto CHAN'

14. The form VAT 7 (Application to cancel your VAT registration) was ultimately signed by Dr Chan on 17 December 2009 and received by HMRC (Grimsby) on 21 December 2009. In that form Dr Chan estimated taxable supplies to be made by OVC in the next 12 months at £60,000 – indicating that that was the amount made in the last year.

15. On 22 September 2009 Mr McCulloch of Salter & Company wrote to HMRC stating that OVC wished to appeal against their VAT registration with effect from 3 March 2008. The letter stated:

35 'The registration was made erroneously by a member of staff and it was never the company's intention to register for VAT as turnover was always expected to be below the registration limits and, due to the nature of the business, there is little reclaimable input VAT. Sales for the year ended 28 February 2010 are expected to be between £50,000 and £55,000.

40 Turnover for the first accounting period was £64,452 and the accounts were prepared on the basis that the company was not VAT registered. The accounts were prepared on this basis because no VAT return forms were received at the company's premises until June 2009. Also, during a phone call to the Grimsby Registration Unit on 11 March 2009 we were informed that online VAT registration application (acknowledgement reference number 22298459408) had lapsed and the company would need to reapply for VAT registration.

For the period ended 28 February 2009 the company accounts show a loss of £34,322 and losses are still being incurred. If the company was forced to pay VAT from inception then we fear that the Café would have to be closed, with the subsequent loss of tax and NI (and increase of benefits payable) to yourselves.

5 Given these exceptional circumstances, we would be very grateful if you would rescind the company's VAT registration from 3 March 2008.'

16. HMRC's decision appealed against was communicated to OVC by a letter dated 1 September 2011 from Officer Mrs Sharon Hancox of HMRC Appeal and Reviews Unit.

10 17. Officer Hancox made the point that the correspondence about the incorrect postcode on the Certificate of Registration shows that there is no doubt that OVC received notification of the registration and of OVC's VAT registration number.

15 18. Officer Hancox's decision was that HMRC had no legal power to cancel the registration from a date earlier than the date on which the request for deregistration was made, citing paragraph 13(1), Schedule 1, VAT Act 1994 ("VATA"), which is in the following terms:

20 '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.'

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

25 '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.'

20. Officer Hancox upheld an earlier decision of HMRC that OVC was properly registered for VAT with effect from 3 March 2008 and that the date of deregistration would be no earlier than 11 September 2009 (the date on which Dr Chan's letter dated 9 September 2009 was received by HMRC – see above).

30 21. I am satisfied that OVC was correctly registered for VAT with effect from 3 March 2008 following the online application made by Salter & Company. The Certificate of Registration for VAT was issued following (and as a result of) that online application and Dr Chan's telephone contact and letter of 31 March 2008 dealing with the query about the postcode recorded on the Certificate of
35 Registration make it entirely clear that OVC knew that it was registered for VAT with effect from 3 March 2008 and did not at that time have any intention that it should not be so registered.

40 22. I find that the application was not made erroneously – indeed Dr Chan confirmed it by correcting the postcode on the Certificate. Any information which may have been received from the Grimsby Registration Unit on 11 March 2009 was obviously in conflict with the plain terms of the Certificate of Registration.

OVC's decision to prepare accounts on the basis that it was not registered for VAT was an error which is not relevant to the issues arising in the appeal.

5 23. HMRC are bound to treat applications for registration for VAT as applications made advisedly and there is no basis on which to hold that OVC was not correctly registered for VAT with effect from 3 March 2008.

24. As to the time of deregistration, it appears that HMRC's decision to cancel OVC's VAT registration with effect from 11 September 2009 rather than any earlier date may have been caused by the fact that outstanding VAT returns were not received from OVC until 11 September 2009.

10 25. It is a fact, however, that Dr Chan (on behalf of OVC) told HMRC in the telephone call on 11 June 2009 that he "would like to deregister from the date of registration" and that on that date deregistration forms were issued.

15 26. It seems to me, therefore, that 11 June 2009 can and should be taken to be a date on which OVC made a request for cancellation of its registration, for the purposes of paragraph 13(1), Schedule 1, VATA.

20 27. Mr Rowe, for HMRC, told me that HMRC did not dispute OVC's contention that its actual turnover did not exceed the relevant VAT registration thresholds during its period of registration. Therefore, for the purposes of paragraph 13(4), Schedule 1, VATA, there was no time when OVC was 'subject to a requirement to be registered' under the VATA.

25 28. Under paragraph 13(1) of Schedule 1, VATA there is no explicit condition that a VAT registration cannot be cancelled with effect from a date earlier than the date when HMRC are in possession of all outstanding VAT returns. All that is required is that the registered person must satisfy HMRC that he is not (and never has been) liable to be registered under the Schedule.

29. OVC in this case have satisfied HMRC that they were not (and never had been) liable to be registered under the Schedule – albeit that they did so later than 11 June 2009.

30 30. In my judgment the correct date for the cancellation of OVC's VAT registration to take effect is therefore 11 June 2009 rather than 11 September 2009.

35 31. For these reasons I dismiss OVC's appeal against the decision not to back-date the cancellation of the registration to 3 March 2008, but I allow OVC's appeal against HMRC's decision to make the cancellation effective from 11 September 2009 rather than 11 June 2009. The appeal is allowed in part accordingly.

32. The amount of VAT for which OVC is liable will fall to be adjusted in accordance with my decision.

Right to apply for permission to appeal

33. 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 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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JOHN WALTERS QC

TRIBUNAL JUDGE

RELEASE DATE: 11 JULY 2013

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