



**TC02793**

**Appeal number: TC/2011/07029**

*VALUE ADDED TAX – VAT on supplies made to appellant – whether input tax deductible by appellant – supplies not used by appellant in its business or for making taxable supplies – supplies instead used in the business of an associated company which was a partially exempt trader – held the VAT in these circumstances was not the appellant’s input tax – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SILVERGUM SOLUTIONS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOHN WALTERS QC  
MRS C E FARQUHARSON**

**Sitting in public in London on 18 September 2012**

**The Appellant did not appear and was not represented**

**Les Bingham, Higher Officer, HMRC, for the Respondents**

## DECISION

5

1. There was no appearance at the hearing of this appeal by or on behalf of the appellant, Silvergum Solutions Limited (“Silvergum”). We were satisfied that Silvergum had been notified of the hearing or that reasonable steps had been taken to notify it of the hearing and we considered that it was in the interests of justice to proceed with the hearing. Accordingly, having regard to rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, we proceeded with the hearing in the absence of any representation for Silvergum.  
10
2. Silvergum appeals against an assessment raised by the Respondents (“HMRC”) to recover input tax of £26,605 in total, deducted in the VAT periods 06/07 to 12/10 by Silvergum, on the grounds that the VAT concerned was not the input tax of Silvergum but related to services used by an associated company, SilverPay Services Limited (“SilverPay”).  
15
3. Following a control visit to Silvergum by Officer Myra Snook on 9 September 2010, HMRC were made aware that Silvergum was claiming to deduct as input tax VAT on supplies to it by a third party, Integral Computers Limited (“Integral”) for computer terminal hosting charges which were in fact used by SilverPay rather than Silvergum. We were told that computer terminal hosting services relate to the administration of internet services supporting chip and pin credit card payment machines, used, for instance, by taxi drivers. SilverPay is a partially exempt trader and therefore is entitled to deduct as input tax only a proportion of the VAT on supplies to it. HMRC were also made aware that Silvergum did not invoice SilverPay for the computer terminal hosting charges supplied to it (Silvergum) by Integral which related to computer terminals used by SilverPay.  
20  
25
4. There is a letter in our papers from Mr Ken Hansen, the managing director of Silvergum, to Officer Snook dated 3 March 2011, in which he states that ‘[a]s a result of your recommendation we immediately took action to ensure that Integral invoiced SilverPay (Silvercab) Services Limited instead’. This statement appears to refer to supplies made after the control visit and, in any event, does not deal with HMRC’s point that the invoices from Integral to Silvergum in the periods 06/07 to 12/10 were not recharged to SilverPay.  
30  
35
5. There was a meeting between Officer Snook and Mr Hansen on 24 March 2011, in which it was established that the supplies made by Silvergum (selling and leasing loyalty systems) were all taxable and that the services supplied by Integral to Silvergum were all in relation to SilverPay’s computer terminals and that there had been no recharge of these services by Silvergum to SilverPay.  
40

5 6. Mr Hansen later (in a letter to Officer Snook bearing a fax date 28 April 2011) made the point that all Silvergum's VAT returns up to and including the VAT period 12/07 had been 'checked by your colleague Jim Morrison on 5<sup>th</sup> February 2008 and passed as having no problems' and asking that the periods 06/07 to 12/07 should therefore not be included 'in your calculations' – i.e. in any forthcoming assessment.

7. Officer Snook acknowledged that the previous visiting officer (we assume, Officer Morrison) had not identified the problem on the earlier visit on 5 February 2008, but stated (in a letter to Silvergum dated 13 May 2011) that VAT periods back to a dated in 2007 could be included in an assessment to correct errors.

10 8. The assessment (carrying interest at 3%) was raised on 7 June 2011, using figures supplied by Silvergum. We were shown a copy of the schedule of payments to Integral by Silvergum, supplied to HMRC by Silvergum's bookkeeper, from which the assessment was calculated. Silvergum appealed to the Tribunal by a Notice of Appeal dated 26 August 2011 stating, as its grounds for appeal, that Silvergum 'has  
15 not claimed input tax on behalf of another company' and that 'previous inspections undertaken by HMRC have accepted this to be the case'.

9. The Tribunal finds as a fact that the supplies to Silvergum by Integral were computer terminal hosting services which were in fact used in relation to computer terminals owned by SilverPay rather than Silvergum.

20 10. A taxable person is entitled to credit for input tax attributable to taxable supplies (and certain other supplies not relevant to this appeal) made by that taxable person in the course or furtherance of his business (section 26, VAT Act 1994 ("VATA")).

25 11. For these purposes, input tax in relation to a taxable person is defined, for purposes relevant to this appeal, as 'VAT on the supply to him of any goods or services ... being ... goods or services used or to be used for the purpose of any business carried on or to be carried on by him' (section 24(1)(a) VATA) .

30 12. It follows from the fact that the supplies in issue by Integral were to Silvergum that the VAT charged by Integral cannot be input tax for which Silvergum is entitled to credit unless it is attributable to services used by Silvergum for the purpose of a business carried on by Silvergum, or to taxable supplies made by Silvergum. But there is no evidence that it is so attributable, because, as a matter of fact, the computer terminal hosting services were used by SilverPay, not Silvergum and Silvergum did not recharge the services to SilverPay.

35 13. Therefore Silvergum was not entitled to credit for that input tax, the conditions in section 26, VATA not being satisfied. Further, there is no bar on HMRC assessing in relation to the VAT periods 06/07, 09/07 and 12/07 even though the point had not been picked up on the earlier control visit. It was Silvergum's responsibility to make VAT returns on the correct basis and this responsibility cannot be shifted to HMRC because a control visit was made on which the point was not picked up. The  
40 assessment must therefore be upheld and Silvergum's appeal dismissed.

14. There was a proposal to assess a penalty on Silvergum in relation to this matter, but any penalty was suspended for 12 months from a date in late 2011 and Silvergum's VAT registration was cancelled following an application to that effect made in September 2011. The Tribunal was informed that no penalty has in fact been issued and, following the cancellation of registration there was no prospect of this happening. We think it appropriate, however, formally to give liberty to Silvergum to appeal or to reinstate its appeal against any penalty should a penalty in fact be raised against it in relation to this matter.

**15. Right to apply for permission to appeal**

16. 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.

**JOHN WALTERS QC**

**TRIBUNAL JUDGE**

**RELEASE DATE: 22 July 2013**