



**TC02809**

**Appeal number: TC/2011/05431**

*VAT. Input tax reclaimed. Allegations of fraud by HMRC. No evidence of fraud. Costs against HMRC when it makes serious allegations (of fraud) absent evidence to support such allegations.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SIMPLE SOLUTIONS GB LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE GERAIN T JONES Q.C.  
MR. DEREK SPELLER**

**Sitting in public at Bedford Square, London on 10 July 2013.**

**Mr. Young, counsel, for the Appellant**

**Mr Priest, instructed by the General Counsel and Solicitor to HM Revenue and  
Customs, for the Respondents**

## DECISION

5 1. The appellant, Simple Solutions GB Ltd, appeals against three VAT  
assessments issued by the respondents, the first in the sum of £19,794 for the quarter  
ended 28 February 2009, the second for £26,206 for the quarter ended 31 May 2009  
and the third being £32,612 for the quarter ended 30 August 2009. Those three  
assessments were made because the respondents took the view that the appellant had  
10 wrongly reclaimed VAT in respect of goods which had never been supplied to it and  
for which it had made no payment.

2. Additionally, the appellant appeals against assessments totalling £32,865.98 in  
respect of VAT that it reclaimed, in circumstances where the respondents contend that  
the goods and services should have been zero rated and so no reclaim for VAT paid  
should have been made. It is not disputed that the appellant did pay the VAT.

15 3. There is also a sum £7037.59 in dispute because the respondents have refused a  
repayment of VAT in respect of the quarter ended 30 November 2009 on the basis  
that the goods and/or services should have been zero rated and thus it is up to the  
appellant to go to the contractors, C. M. Harvey and/or Extra Contracts to recover the  
VAT that the respondents contend should not have been paid.

20 4. The foregoing bare recital of what this appeal is about does not disclose the  
reality of the issue raised by it. At the outset of the appeal it seemed to us that the  
respondents had raised the various assessments not on the basis that they had detected  
some inaccuracy or error in the appellant's business records but, rather, on the basis  
25 that the respondents considered that the various VAT reclaims made for the quarters  
referred to above, were based on false documents and thus were fraudulent claims. At  
the very outset of the appeal we sought to establish whether that was the basis upon  
which the respondents' case was being put and Mr Priest confirmed that that was so.  
In other words, the respondent was alleging fraud on the basis that the various  
invoices issued by Dallas Estates and London Building Supplies were false or, as I put  
30 it, "bent invoices".

5. The case that the appellant had to rebut was that it had made false and  
fraudulent VAT repayment claims. Where such a serious issue is raised the  
respondents bear an evidential burden to make out that case given that it is improper  
to make such a serious allegation absent cogent evidence to support it.

35 6. On behalf of the appellant, Mr Karim, the appellant's Project Manager, gave  
sworn evidence in accordance with his witness statement dated 9 April 2013, which  
stood as his evidence in chief. He referred to the building projects that the appellant  
had undertaken in 2008/2009. It was not in dispute that the appellant engaged in  
building houses on a speculative basis. The appeal bundle contains photographs of  
40 some of the houses built by the appellant in section 2, pages 103 – 117.

7. When Mr Karim was cross examined he was questioned about some of the  
supplies invoiced to the appellant. In particular, he was referred to the bundle at

section 1, pages 89 and 102 where two separate invoices each issued by London Building Supplies Ltd record the supply of 36 "cooker outlets" on 15 June 2009 and 36 "cooker outlets" on 10 July 2009. He was asked why, if the appellant was building only eight houses and refurbishing one other, a total of 46 cooker outlets (costing  
5 £1.33p each) were required. His explanation was that the term "cooker outlets" refers to the plastic fused electric box set into the wall of a house (with no switch) from which connections can be made to switched outlets. He pointed out that they are not limited to use with cookers, but to any appliance that is fitted in rather than being freestanding or mobile. He was also asked about the invoices at pages 86 and 99 each  
10 of which disclose the sale of six Combi Boilers to the appellant. It was put to him that this was excessive. His reply was that the one property that was refurbished had two boilers in it and so a total of 10 were needed. He said that the company still has one in stock but that another became damaged and was eventually scrapped.

8. It was also put to Mr Karim that invoices 753 and 897 issued by London Building Supplies Ltd were exactly the same and, inferentially, thus suspicious. In  
15 fact, although the two invoices record the same goods, the quantities of various goods differ.

9. Mr Karim was asked why, apart from a payment of £200,000 to London Building Supplies Ltd, other payments had been made on a cash on delivery basis. He  
20 explained this on the basis that the company had an overdraft limit of £50,000 and when that limit was at or near its upper margin and accounts with trade suppliers were also at the upper end of the applicable credit limit, supplies would be obtained from elsewhere and paid for on a cash on delivery basis. He also said that cash on delivery was preferred because there had been one instance where the appellant had paid  
25 £17,500 (or thereabouts) in advance for supplies of concrete products only to find that the supplier went into liquidation prior to the products being delivered to site. Thus, the appellant remained as an unsecured creditor of a company in liquidation.

10. During the cross-examination of Mr Karim it was put to him, fairly and squarely, that the goods referred to in invoices 753 and 897 issued by London Building Supplies Ltd, had not in fact been supplied or purchased. In other words, it  
30 was being put to Mr Karim that these invoices had been invented for the purpose of making a fraudulent VAT repayment claim. The witness denied that that was so. Reference was made to pages 118 and 119 in the bundle which evidenced large cash withdrawals from the appellant's bank account, sufficient to fund payments in cash to  
35 suppliers, as sworn to by Mr Karim.

11. Given the approach taken by the respondents from the outset and given that it was put to Mr Karim during cross examination that the appellant had acted fraudulently, it was surprising, to say the least, to hear Mr Priest saying during his closing submissions on behalf of the respondents, that "*We have no evidence  
40 whatsoever of fraud and/or dishonesty in this case*". If that was his position, his case should not have been put on that basis from the outset and Mr Karim should not have been cross examined on that basis. Indeed, if a member of the legal profession had cross examined a witness on the basis that fraud had taken place, when he/she had

seen no credible evidence of such fraud or dishonesty, that would be a serious matter of professional misconduct.

12. The respondent called Mr Dunster to give evidence. He referred to visiting the appellant's business and examining its electronic and prime business records. He said that in respect of the invoices issued to the appellant by London Building Supplies Ltd and Dallas Estates Ltd he had "concerns" due to the lack of detail disclosed on the face of their respective invoices. He said that they raised a query in his mind as to whether the supplies had actually taken place. Mr Dunster also gave evidence to the effect that he believed the supplies made by C M Harvey, Homecheck and Extra Contracts were on the basis of supply and fit and so should have been zero rated, as opposed to supply only when the supply would have been standard rated.

13. During cross examination Mr Dunster agreed with the incorrect legal proposition that even a supply and fit contract must be standard rated if the supplier is not provided with an exemption certificate or a certificate certifying that the supply and fit is zero rated for VAT purposes. There is no such requirement, as becomes apparent to those who consider the content of HMRC Notice 708.

14. Mr Dunster accepted that if goods had been collected, rather than supplied to the appellant on a supply and fit basis, then they would have been properly standard rated.

15. It was of rather more concern to us that Mr Dunster acknowledged that he had made no enquiries of or checks with either London Building Supplies Ltd or Dallas Estates Ltd in respect of the various invoices in respect of which he had "concerns". Instead of putting the respondents' case on the basis that these invoices were fraudulent, his stance became that "there was not enough evidence that the supplies took place". The difficulty with that evidence is that there is no credible evidence to impugn the invoices issued by either supplier. However, there is credible evidence to show a substantial payment of around £200,000 by cheque or bank transfer to London Building Supplies Ltd and then documented cash withdrawals from the bank to support the proposition that goods were paid for on a cash on delivery basis. It stretches credence to think that two building material supply companies would invent invoices on which they were charging VAT and thus would have to account for VAT, in order to allow the appellant to make a fraudulent VAT repayment claim.

16. There is no doubt in our minds that the exercise undertaken by Mr Dunster was inadequate in that he made few, if any, available enquiries or checks to ascertain whether his suspicions were or were not well founded. For example, he could have chosen items that are commonly put into new houses, perhaps doors, and established whether doors well in excess of the number required for these several dwellings had been invoiced to the appellant. The same cannot be said of items such as wiring, ducting or piping because we would not expect anybody other than an experienced builder or quantity surveyor to know how much of each material might be used in a dwelling of a given size. The difficulty with the evidence was that Mr Dunster accepted that he had not looked at earlier invoices to see what quantities of various

materials had been ordered and paid for, let alone had he explored whether boilers over and above the 12 referred to above, had been ordered and paid for.

5 17. We are left in no doubt that the serious basis upon which the respondents' case was initially put was wholly unsupported by credible or any evidence sufficient to justify such serious allegations. More than that, in the period of time that it took for this appeal to be heard before us, the respondents' stance had changed from being that it was alleging fraud and dishonesty to a position where, in closing, Mr Priest accepted (correctly in our judgement) that the respondents had no evidence whatsoever of fraud or dishonesty.

10 18. Notwithstanding the shift in the position of the respondents, it was argued that the appellant should not recover the VAT paid (or have the assessments set-aside) because the invoices relied upon did not contain sufficient detail to satisfy regulation 14(1) of the Value Added Tax Regulations 1995. By way of example, Mr Priest contended that abbreviations such as "rr127" and "rr128" were an insufficient  
15 description of the goods to permit reliance upon the invoice in support of a VAT reclaim. However, he accepted that abbreviations and acronyms are as likely to be part and parcel of everyday usage amongst those involved in the building industry as they are in almost every other walk of life.

20 19. In fairness to Mr Priest he did not press this point; it was something of a last-ditch attempt to defeat the appellant in circumstances where it was then apparent to Mr Priest that, given the concession that he had made, the respondents' primary case was bound to fail.

25 20. We have been through the various invoices and reject the contention that the goods stated therein are insufficiently described for the purpose of regulation 14. In our judgement Mr Priest's valiant rearguard action avails the respondents nothing.

30 21. We also have to deal separately with the invoices on which, it has been contended, VAT was wrongly paid at the standard rate and so should not have been reclaimed and, in respect of £7037.59, need not be refunded by the respondents to the appellant. We are not satisfied that it is more probable than not that those various  
supplies, or any of them, were supply and fit, as opposed to supply only, so that they or any of them could and should have been zero rated. We have seen no documents dealing with this issue and we have heard no evidence sufficient to displace the evidence given by Mr Karim that these were supplies in respect of which VAT was properly paid at the standard rate and, accordingly, reclaimed.

35 22. At the end of closing submissions Mr Young, on the half of the appellant, submitted that although this case has not been placed into the "complex" category, nonetheless the respondent should be ordered to pay the appellant's costs given that it had put its case on the serious basis that we have referred to above, notwithstanding that it had no evidence sufficient to justify it making allegations of fraud or  
40 dishonesty, let alone succeeding thereon. In our judgement it is, at the very least, unreasonable to conduct litigation on such a basis and so it is appropriate that the

appellant is awarded its costs of this appeal; such costs to be assessed by the Tribunal in default of agreement.

5 23. 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.

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**Decision.**

The appellant’s appeal is allowed in respect of the assessments totalling £111,477.98 and is also allowed in respect of the refusal of credit in the sum of £7037.59.

15 The respondent must pay the appellant's costs of this appeal, such costs to be assessed by the Tribunal in default of agreement.

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**GERAINT JONES Q.C.  
TRIBUNAL JUDGE**

**RELEASE DATE: 29 July 2013**

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