



**TC02822**

**Appeal number: TC/2012/03848**

*VAT – whether business made taxable supplies - no - whether input tax allowable – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**NOBLE INTERNATIONAL EXCHANGE LIMITED      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALISON MCKENNA**

**Sitting in public at Finance and Tax Tribunals, 45 Bedford Square on 1 August 2013**

**The Appellant did not appear**

**Mrs Rita Pavely, an officer of HMRC, appeared for the Respondents**

## DECISION

1. The Appellant company appeals against HMRC's decision to cancel its VAT registration from 30 June 2011 and against the assessment raised to disallow the input tax it claimed in VAT periods 03/10 to 03/11 in the sum of £10, 019.00

2. HMRC reviewed its decisions at the request of the Appellant's director Mr Shafiq Ahmed. The final decision was dated 18 January 2012. Mr Ahmed then appealed to the Tribunal on behalf of the company by a Notice of Appeal dated 10 February 2012. This appeal is made under s. 83 (1) (a) and (p) of the VAT Act 1994 ("VATA").

3. The Appellant company was not represented at the hearing before me on 1 August 2013. The Tribunal was informed that Mr Ahmed had been convicted of a criminal conspiracy and sentenced to eight years' imprisonment in June 2013. The Tribunal received an unsigned letter from "Noble International Exchange Limited" requesting that the hearing should proceed in Mr Ahmed's absence, as all of the relevant points for the Appellant had already been made in written submissions. HMRC did not object to this proposal.

4. I have considered rule 33 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, which provides that a Tribunal may proceed in a party's absence if it is satisfied that the absent party has been notified of the hearing and considers that it is in the interests of justice to proceed. I was satisfied that the Appellant company had received notice of the hearing and concluded that, in all the circumstances, it was in the interests of justice to proceed to hear the appeal in the absence of a representative for the company, taking into account the submissions previously made on its behalf by Mr Ahmed.

### *Background Facts*

5. The Appellant company was registered for VAT from 1 July 2007. On the VAT1 registration form, the company's business activities were described as "*Bureau de Change. Money Transmitter*". An estimated taxable turnover of £50,000 was given and it was stated that the company did not expect to make exempt supplies.

6. In 2010, de-registration action was initiated by HMRC but cancelled after representations were made by the company. Subsequently the twelve VAT returns for VAT periods 06/08 to 03/11 disclosed no output tax and input tax was claimed on four of those returns only. The 06/11 return was selected for verification and a visit to the company premises took place on 3 August 2011.

7. As a result of the visit, HMRC blocked the input tax claim for the period as it related to the purchase of a non-qualifying motor vehicle. The input tax claim for that period was reduced to nil. That decision is not the subject of an appeal. Following the verification visit, HMRC made further checks and made the decisions to de-register the company and to raise the assessment now under appeal.

8. The company's VAT registration was cancelled with effect from 1 July 2011. Mr Milne also considered the company not to be entitled to the input tax it had claimed in its 03/10, 09/10, 12/10 and 3/11 returns and consequently raised an assessment for £10, 019 which was the total amount claimed over those periods. He wrote to inform Mr Ahmed of his decision.

9. Mr Ahmed asked for Mr Milne's decisions to be reviewed. In the course of that process, Mr Ahmed stated his intention to make taxable supplies in the future (in the form of consultancy services) and it was decided to reinstate the company's VAT registration in December 2011. The company remains VAT registered. Accordingly, the decision to cancel the VAT registration is no longer an issue for the Tribunal to adjudicate upon.

### *The Evidence*

10. The Tribunal heard sworn evidence from HMRC Officer Vincent Milne, who had undertaken the visit to the company premises in August 2011, where he had interviewed Mr Ahmed. Mr Milne had taken notes during the interview, which had been retained on file, although he told the Tribunal that these had not been put to Mr Ahmed for his agreement. He had subsequently made a witness statement detailing his evidence about the visit and interview, which was included in the Tribunal's hearing bundle. It contained a statement of truth, although it was unsigned and undated.

11. Officer Milne told the Tribunal that during his visit to the company Mr Ahmed had told him that the company's business activities consisted of money transfers on behalf of UK based customers to recipients overseas, mainly in Pakistan. Mr Ahmed had also said that the company dealt with "sub-agents" in the UK, to whom it offered currency exchange services. Mr Milne told the Tribunal that Mr Ahmed had not mentioned any other business activities, he had shown Mr Milne documentation in respect of the money transfer business only. Mr Milne had formed the view that the company was engaged in exempt supplies of financial services only and had explained his view to Mr Ahmed, who had appeared to understand, although he was not in the habit of recording his exempt supplies on his VAT returns for the company. Mr Milne concluded by telling the Tribunal that in his view, the taxable consultancy supplies had commenced about six months after his visit to the company premises, as the only documentary evidence he had seen relating to that activity dated from that period.

12. In addition to Mr Milne's evidence, HMRC relied upon documentary evidence in the form of the company accounts and correspondence with Mr Ahmed in which he appeared at times to have accepted that Mr Milne's impression of the company's business activities were correct. The Tribunal considered the company's accounts for the financial period ended September 2010, which state in the notes that "turnover represents total money collected in the UK for money exchange services". In the trading and profit and loss accounts for that period the turnover is broken down into "commission" and "foreign exchange gain".

*The Law*

13. Schedule 9 Group 5 item 1 of VATA provides that the “*issue, transfer, or receipt of or any dealing with, money, any security for money or any note or order for the payment of money*” is an exempt supply for VAT purposes.

5 14. The Appellant bears the burden of proof in this appeal. The standard of proof is the civil standard of the balance of probabilities.

*Submissions*

15. Mrs Pavely, on behalf of HMRC, submitted that the evidence showed that the Appellant company was engaged only in exempt supplies under schedule 9 group 5  
10 item 1 of VATA during the relevant period. She relied upon Mr Milne’s evidence of the visit to the company and interview with Mr Ahmed, and on the company accounts. She also suggested certain points of interpretation of Mr Ahmed’s letters to HMRC which appeared to support HMRC’s case.

16. Mr Ahmed has made numerous submissions in correspondence during the life  
15 of this appeal, to which I have had regard. In particular, he filed a Reply to HMRC’s Statement of Case, which I have considered carefully. He submitted that HMRC’s two decisions (to raise the assessment and to reinstate the VAT registration) were inconsistent so that they should not be allowed to stand together. He argued that the fact of the reinstatement of the VAT registration was an implicit acceptance by  
20 HMRC that taxable supplies had been made by the company. He further submitted that HMRC should not have registered the company for VAT if it thought that it was engaged only in exempt supplies. He also submitted that the company had at the relevant time been engaged in activity preparatory to the making of taxable supplies in the form of consultancy services, but that the process of FSA registration for clients  
25 was lengthy so that invoices were only produced much later. He did not, however, produce any documentary evidence (such as correspondence with prospective customers, a business plan, details of marketing activities) to support this assertion.

*Conclusion*

17. Having considered all the evidence carefully, I conclude that the Appellant has  
30 not discharged the burden of proof in relation to his appeal. I am satisfied on the balance of probabilities that the company was engaged only in exempt supplies during the relevant period, so that the input tax claimed was not allowable and the assessment must stand.

18. In so concluding I accept Mr Milne’s evidence that Mr Ahmed did not mention  
35 any consultancy work being in hand at the time of the visit, and I take into account the company’s own accounts which also do not mention this business activity. I also note that Mr Ahmed has not produced any documentary evidence to support his assertion that consultancy work was in hand during the course of this appeal. I agree with Mr Milne that the evidence shows that the consultancy activities commenced in late 2011,  
40 and I note that it was on the basis of this evidence that the company’s VAT registration was reinstated. I have not relied upon Mrs Paveley’s reading of Mr

Ahmed's correspondence because this did not appear to have been put to him before the hearing and it does not seem fair to me to accept her reading of comments he had made without being able to ask him directly what he had meant.

19. Accordingly, this appeal is dismissed.

5 20. 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  
10 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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**ALISON MCKENNA  
TRIBUNAL JUDGE**

**RELEASE DATE: 8 August 2013**