



TC03222

Appeal number: TC/2009/14115

VALUE ADDED TAX – recoverable input tax – whether tax in dispute was referable to cost components of the appellant’s business – found on the evidence that some but not all of the tax claimed for repayment was so referable – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MICHAEL EDWARD GARDNER
(trading as GARDNER & CO)**

Appellant

- and -

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

**TRIBUNAL: JUDGE JOHN WALTERS QC
JOHN ROBINSON**

Sitting in public at Southampton on 13 January 2014

The Appellant in person

**Sarabjit Singh, Counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

- 5 1. On 13 July 2011 this Tribunal released a decision in principle that the appellant (“Mr Gardner”) was, in the periods 03/09 and 06/09 carrying on a building business and intended to make taxable supplies in the course or furtherance of that business, and that tax paid on expenses which were or are cost components of Mr Gardner’s taxable outputs in his building business (so long as not claimed out of time) was in principle recoverable. The reference for our Decision is [2011] UKFTT 470 (TC).
- 10 2. We directed the parties to review the amounts of tax claimed as recoverable as input tax in the light of our Decision and to determine, if possible by agreement, how much, if any was properly recoverable.
- 15 3. On 4 October 2011 the respondents (“HMRC”) visited Mr Gardner and on 14 October 2011 wrote to him stating that they had revisited the claims he had made for the periods 03/09 and 06/09 in the light of our Decision and that they would allow a net total of £3,996.36 of the input tax claimed. This amount was repaid by an assessment dated 7 March 2012. At the hearing on 13 January 2014, Mr Gardner acknowledged that this repayment had been made.
- 20 4. Mr Gardner was not satisfied that the repayment made was the full amount due to him and maintained his dispute with HMRC.
5. Judge Walters released further Directions on 13 June 2012.
- 25 6. Mr Singh, for HMRC, settled a Skeleton Argument dated 31 July 2012, which was before us at the hearing on 13 January 2014, and to that Skeleton Argument was attached a Schedule which conveniently set out the input tax which remained in dispute. Since the date of the Skeleton Argument, Mr Gardner had accepted that some of the input tax for which he had continued to claim repayment was not due.
- 30 7. There remained in dispute input tax on a number of invoices. Mr Gardner gave oral evidence at the hearing on 13 January 2014 in relation to these and indeed produced at the hearing for the first time copies of some (but not all) of the invoices concerned and other relevant documentation. Mr Singh cross-examined Mr Gardner on his evidence.
- 35 8. In the light of Mr Gardner’s evidence, HMRC agreed to allow a repayment of a further £1,252.39 of input tax, which we find to be an amount of tax paid on expenses which were or are cost components of Mr Gardner’s taxable outputs in his building business, and Mr Gardner was content to withdraw his appeal in relation to the remainder of his claim.
9. We dispose of the appeal accordingly, allowing it to the extent indicated.
10. 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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**JOHN WALTERS QC
TRIBUNAL JUDGE**

RELEASE DATE: 14 January 2014