



**TC03298**

**Appeal number: TC/2011/00957**

*VAT – input tax – input tax denied on various invoices on the grounds that it was not appropriate to the Appellant company – was this view correct – in part – appeal allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GRIMSHAW PROPERTIES LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE LADY JUDITH MITTING  
MRS BEVERLEY TANNER**

**Sitting in Manchester on 8 May 2013, 1 August 2013 and 14 January 2014**

**Mr William Mitchell, Accountant, for the Appellant**

**Susan Ellwood, Officer, instructed by the General Counsel and Solicitor to HM  
Revenue and Customs, for the Respondents**

## DECISION

1. The Appellant Company appeals against 5 decisions of the Respondents, one  
5 being in relation to a penalty imposed in period 10/10 and the remaining 4 disallowing  
input tax claimed by the company in periods 04/08, 07/09, 10/09, and 10/10. The  
input tax claims were made in the circumstances which we describe below and were  
disallowed on the basis that the Respondents believed they were not appropriate to the  
Appellant.

10 2. We heard oral evidence on behalf of the Respondents from the decision-making  
officers, Messrs Parekh, Godley, Wilmot and Hargreaves. The Appellant was  
represented by its Accountant, Mr William Mitchell and also present were its two  
directors, Mrs Margo Grimshaw and her son, Andrew. Throughout all the  
15 correspondence and the documentation which was before us, Mrs Grimshaw is  
referred to as Baroness Margo Carmichael-Grimshaw. She asked at the beginning of  
the hearing that we refer to her as Mrs Grimshaw throughout which, for ease, we  
adopt. We heard no sworn oral evidence on behalf of the Appellant but heard from all  
three in the sense that they shared the telling of their story and all made various  
submissions to us at various stages.

20 3. We begin by setting out the company background and we will then take each  
invoice in turn as they were all raised in different circumstances.

4. The Appellant is a limited company, the registered office of which is Toad Hall,  
Yew Tree, Blackburn, which is also the home address of Mrs Grimshaw and her son.  
The principal activity of the company, which we take from its annual accounts, is "...  
25 owning property for disposals and rent and looking for potential development of  
domestic and commercial properties in East Lancashire particularly ...". Its two  
directors are Mrs Grimshaw and her son, Andrew and they also trade as a separate  
entity as a partnership. Mrs Grimshaw and Mr Grimshaw are also directors of a  
further company, Cathedral Court Blackburn Limited, ("Cathedral Court"). Cathedral  
30 Court was incorporated on 21 July 2004, registered for VAT with effect from 1  
January 2005, went into administration in October 2008 but carried on trading under  
the control of an administrator until it was eventually dissolved on 11 August 2011.

5. Cathedral Court was a development company and was formed to develop a  
large area of land into a residential and commercial site which would, on completion,  
35 be managed by the Appellant. The land to be developed was owned by the Appellant  
and by the partnership and in or around 2006 both those entities transferred the land to  
Cathedral Court.

6. To finance the construction project, Cathedral Court secured funding from RBS  
but a condition of the funding was that Mrs Grimshaw should give a personal  
40 guarantee for £1million. A third firm was contracted to undertake the construction.  
Construction began but before the work could be completed the construction company  
went into liquidation and RBS withdrew their financial backing. This led to Cathedral  
Court eventually folding and to RBS pursuing Mrs Grimshaw on her personal

guarantee. A number of legal actions then ensued as Cathedral Court tried to prevent the withdrawal of funding and Mrs Grimshaw attempted to resist the enforcement of her personal guarantee. There had been a further wrinkle when in the original transfer of land to Cathedral Court, the solicitors then acting had inadvertently transferred a piece of land (“the BBC Building”) which had not been intended to go into the development. This led to actions for rectification of the register and for professional negligence against the original solicitors and to extricate the BBC Building from the charge which RBS had over the entire development site. These legal actions were protracted and involved several sets of solicitors and it is in the main on their bills that the input tax which is now the subject of this appeal was being reclaimed.

7. In dealing with the individual invoices, we will in relation to each, set out the circumstances of the invoice, the submissions of the parties and our findings.

### **Weightmans - 04/08**

8. This invoice was dated 28 February 2008. It was made out to “Baroness Margo Carmichael-Grimshaw, Cathedral Court (Blackburn) Limited” at the Toad Hall address. It was described as being an interim invoice to Baroness Margo Carmichael-Grimshaw for professional services. It purported to cover the period April 2007 to February 2008 and its narrative read:

“Various attendances on clients in Blackburn and Manchester inter alia completing plot sale documents, funding documentation and general property issues”

The invoice was in the sum of £4,561 with a VAT element of £798.17.

9. Officer Parekh made the decision to disallow the input tax on this invoice after a routine visit to the Appellant on 6 June 2008. He disallowed the input tax because the invoice was in the name of Cathedral Court and not the Appellant and this remained the stance of the Respondents on this appeal. The Appellant maintained the input tax is allowable to the Appellant because it related to “the settlement of various boundaries and was instigated by Grimshaw Properties Limited”.

10. We allowed an adjournment of the case to enable the Appellant to seek further clarification from Weightmans as to precisely which company they were acting for and what was covered by the invoice. It appeared unlikely to us that the reference to plot sales could have referred to the land transferred by the Appellant to Cathedral Court as those transfers had been completed well before the period covered by this invoice. Unfortunately, the position could not be clarified by Weightmans as the solicitor then acting had since left so we deal with this invoice on the basis of the oral representations and the documents in front of us.

11. We were referred by Ms Ellwood to the company cashbook. This clearly shows that the invoice was paid by the Appellant on 27 March 2008 but that the payment was attributable to Cathedral Court. The cashbook then shows a receipt of the amount paid from Cathedral Court on 2 June 2008.

12. We conclude that the input tax on this invoice is not reclaimable by the Appellant. The invoice is clearly made out to Cathedral Court and although payment was initially made by the Appellant, it was charged back to and repaid by Cathedral Court. There is no evidence before us that the work in question was for the Appellant rather than Cathedral Court and the mere assertion that it was the Appellant which would eventually benefit had everything gone according to plan, is not sufficient to render this company entitled to make the reclaim. In respect of the Weightmans invoice we therefore hold that the appeal against this decision is dismissed and the input tax is not recoverable by the Appellant.

10 **Dar & Co – 07/09**

13. The first difficulty which the Respondents had with this claim is that there were no VAT invoices specific to it and the input tax reclaimed was in reality on staged payments. The amount of input tax being reclaimed was £3,749.25. It was accepted by all three representative for the Appellant that the work done by Dar & Co related in its entirety to a court action number 3832-08 in the Chancery Division. It was not particularly easy, from the rather sketchy documents in front of us, to determine the full scope of this action and indeed there are different references to this particular numbered court case giving different parties. The only “official” document which we had was a sealed order dated 21 August 2009 which clearly shows the parties to the action to have been *Baroness Margo Carmichael-Grimshaw (1) Andrew John Carmichael-Grimshaw (2) and Cathedral Court (Blackburn) Limited (3) v National Westminster Bank (1), David James Kelly (2) and Ian David Green (3)*. The only conclusion we can draw from everything which we have seen and heard is that this action related to the enforcement of the guarantee and it would also appear that the Appellant was not a party to the action. This view is enhanced by various other documents. There is an interim bill from Dar & Co dated 17 July 2009 and a letter dated 31 July 2009, both made out to Mrs Grimshaw and both stated as being in relation to Cathedral Court.

14. The Appellants appeared to accept that the action did relate to the guarantee but their case was that Mrs Grimshaw would never personally have been able to meet the guarantee and the only way it could ever be enforced would be for the Appellant to make the payments on it or indeed to sell up. It therefore followed, asserted Mr Mitchell, that as the survival of the company depended upon defeating the action by the Bank for the enforcement of the guarantee, the company had to be allowed to reclaim the input tax.

15. We have to reject this assertion. All the evidence before us shows that the Appellant was not a party to the action. The action related to Cathedral Court and to Mrs Grimshaw and the mere fact that the success of the action would be to the benefit of the Appellant Company is not sufficient to enable the input tax to be reclaimed. There is in effect no clear nexus between the matters in respect of which the expenditure was incurred and the Appellant’s business. (*Customs & Excise Commissioners v Rosner* [1994] BVC 31).

### **Hammonds – 10/09**

16. Hammonds acted for RBS in the above-mentioned legal action. It was ordered that Mrs Grimshaw should pay the Bank's costs. We were shown correspondence between Hammonds and Dar & Co but there would of course be no invoice from  
5 Hammonds to Mrs Grimshaw as their services were supplied to the Bank. The input tax reclaimed of £750 was an entry taken from the cashbook and appears to have been part of the staged payment.

17. The arguments in respect of this claim were roughly the same as those relating to Dar & Co. There was clearly no supply for VAT purposes by Hammonds to the  
10 Appellant, it merely being an award of costs against Mrs Grimshaw in relation to her personal guarantee. For this reason and for the reasons given above in relation to Dar & Co, we also dismiss the appeal in relation to this decision.

### **Thomas Shaw & Athertons – 10/10**

18. Thomas Shaw & Athertons are both firms of valuers and were instructed to  
15 value a number of properties, both residential and commercial. The same instructions were given to each firm. The input tax reclaimed in relation to Thomas Shaw was £428.75 and for Athertons, £490. It was accepted by the Appellants that both invoices had originally been made out to Cathedral Court and later amended to the name of the Appellant. We accept and find as a fact that instructions to both firms  
20 were given by the Appellant and that payment of both invoices was made by the Appellant.

19. There were 8 properties valued, 6 of which were owned by the Appellant, one of which (Zy Bar) was owned by the partnership and finally Toad Hall, the residential property owned by Mrs Grimshaw and her son.

20. In relation to the 6 properties owned by the Appellant, we were told by Mr Mitchell, and we accept this, that the valuations were sought, in the light of the poorly performing property market, for the purposes of the Appellant's balance sheet. The valuation would have been reflected in the balance sheet to 2 May 2011 and we were referred to a note to these accounts which was made in the light of the valuations and  
30 reads as follows:

“The directors state that the going forward valuation of the land and buildings is in excess of the costs in the balance sheet.”

21. In relation to the 6 properties owned by the Appellant we accept that the properties were all business assets owned by the Appellant and part of it trading  
35 activities and we hold that the company is entitled to reclaim the input tax in relation to those elements of the invoices.

22. In relation to Zy Bar, this is the property owned by the partnership. However, we were told by Mr Mitchell that this property was in fact the security for a debt owed by the partnership to the Appellant and the valuation was necessary for the Appellant  
40 to ensure that the partnership was able to meet its liability to the company. Given this,

which we accept, we hold that the Appellant is also entitled to reclaim its input tax in relation to this property.

23. We can find no justification, and indeed none was offered, for the claim to input tax in relation to the valuation of Toad Hall. This was the residential home owned by Mrs Grimshaw and her son.

24. We are therefore of the view that of the 8 properties valued, 7 had a direct and specific bearing on the Appellant's trading activities and we believe that the easiest way to deal with this is for the Appellant to be entitled to 7/8ths of the input tax claimed on each of these two bills.

#### 10 **Nigel Holden – 10/10**

25. Nigel Holden was the solicitor who acted for the Appellant in relation to the rectification of the Land Registry Register. The firm also acted for the Appellant and for Mrs Grimshaw in relation to a number of other matters. We were referred to a number of their invoices and these relate to, *inter alia*, "opposing guarantee", "default costs". The difficulty with the Nigel Holden claim is that the amounts reclaimed (£744.68 and £1,191.49) could not be easily identified with any particular invoice. What appears to have happened is that Nigel Holden prepared interim bills and then a final statement of account and the invoices were all paid off by staged payments which related to the entirety rather than any individual matter.

26. We are of the view that the Appellant is entitled to reclaim input tax in relation to the rectification of the Register. The BBC Building is clearly a trading asset of the Appellant and as such it had to be retrieved from Cathedral Court and transferred back to the Appellant. The Appellant is entitled to reclaim the input tax on this element of Nigel Holden's account but not on any other. The easiest way which we believe this can be dealt with is to take the figures from two documents. We were referred to an "overall statement of account as at 11 September 2010". This lists the five matters in which Nigel Holden were acting and put the total amount of his services at £46,457.16. We were also referred to a "final account" relating specifically to the rectification of the Register dated 14 September 2010. This is for £37,318.46 (including Counsel's fees and other disbursements). The Appellant is entitled to that proportion of the total input tax which the rectification of the title element represents. This we calculate to be 80.32%. We leave the parties to settle precisely how much this is in monetary terms and indeed in terms of payment or repayment. As Nigel Holden was repaid in stages and not invoice specifically, we have no idea how much input tax has already been claimed and repaid. We leave that to the Respondents to determine and to agree with the Appellant. All we can do is to determine that in relation to Nigel Holden's services, the Appellant is entitled to recover 80.32% of the input tax which he has charged on his invoices.

#### **The penalty**

27. The penalty decision was made by Officer Wilmot and was based upon his disallowance of the Hammonds invoice. The penalty was raised under the provisions

of Schedule 24 Part 3, paragraph 15(1) Finance Act 2007. Mr Wilmot, rightly, detected that in reclaiming the input tax on the payment to Hammonds, the Appellant's Return contained an inaccuracy because the company was not in fact entitled to the repayment. He took the view that the inaccuracy was deliberate but not concealed and that disclosure was prompted inasmuch as the officer spotted it first. He allowed maximum mitigation for co-operation. He had very much in mind when he raised the penalty that the trader had previously been informed that input tax could not be reclaimed on invoices relating to another legal entity and he viewed this as a "repeat offence".

28. We do not believe that a penalty here is justified. It is certainly right that the Appellant had been advised before that it could not reclaim its input tax if the services were to a different entity. However, each of these invoices arises out of slightly different circumstance and all are quite complicated in law. This is especially so in relation to the legal costs arising between Hammonds and RBS. Mrs Grimshaw, as we have said, clearly believed that the future of the Appellant was dependent upon the defence of the claim on the guarantee. She had not received an invoice made out to any other legal entity but merely a letter setting out Hammonds' costs. Although, in law, her view on recovery of the input tax in such circumstances is incorrect, it is of great relevance to the penalty decision that she did not make her claim for recovery of the input tax in defiance of previous instructions but because she had a genuine belief that the company was entitled. Under these circumstances we allow the appeal in respect of the penalty and we cancel it.

### **Summary**

29. In summary therefore

- (1) we dismiss the appeal in relation to the Weightmans' bill in period 04/08;
- (2) we dismiss the appeal in relation to the Dar & C decision in 07/09;
- (3) we dismiss the appeal in relation to the Hammonds input tax in period 10/09;
- (4) we allow the appeal in relation to the penalty in period 10/09;
- (5) we allow the appeal in part in relation to Thomas Shaw & Athertons in 10/10;
- (6) we allow the appeal in part in relation to Nigel Holden's services in 10/10.

30. The appeal is allowed therefore in part.

31. 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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**JUDGE LADY JUDITH MITTING  
TRIBUNAL JUDGE**

**RELEASE DATE: 4 February 2014**