



**TC03506**

**Appeal number: TC/2012/03847**

*VAT – input tax – claim for deduction -were invoices valid –no-was there any other evidence which could have been accepted – no -did respondents exercise their discretion reasonably –yes-was penalty appropriate-yes-appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**IAN NADIN t/a  
IN 2 TRUCKING & WASTE RECYCLING  
- and -**

**Appellant**

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

**Respondents**

**TRIBUNAL: JUDGE BARBARA KING  
MR ALAN REDDEN FCA**

**Sitting in public at Bradford on 2 April 2014**

**The Appellant appeared in person**

**William Brooke of HM Revenue and Customs, for the Respondents**

## DECISION

### *The Issue*

1. This appeal involves assessments by the Respondents (“HRMC”) which disallow claims by the Appellant (“Mr Nadin”) to input VAT in the periods 05/10 and 08/10, and the penalty which was raised on 22 August 2011. The assessments are in the sums of £98,988, raised in a decision dated 15 December 2011 and £41,749, raised in a decision dated 12 January 2012. The penalty was for inaccurate completion of a VAT return imposed under schedule 24 Finance Act 2007 and was for £17,817.84.

2. In his Notice of Appeal Mr Nadin only referred to the decision dated 5 December 2011 but it was accepted by both parties that the issue leading to both assessments is the same and that the validity of the penalty will depend on the decision on the assessments.

### *Legislation*

3. The law relating to credit for input tax is contained in sections 24, 25 and 26 of the Value Added Tax Act 1994 (“VATA”) as amended by various Finance Acts.

4. Section 24(6) VATA provides

‘Regulations may provide:-

(a) For VAT on the supply of goods or services to a taxable person .....to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct either generally or in a particular cases or class of cases.’

5. The regulations referred to above are contained in the Value Added Tax Regulations 1995.

6. “Regulation 13 - Obligation to provide a VAT invoice.

(1) Save as otherwise provided in these Regulations, where a registered person –

a) Makes a taxable supply in the United Kingdom to a taxable person, -- he shall provide such persons as are mentioned above with a VAT invoice--- ”

7. Regulation 14. Contents of VAT invoice.

“Subject to paragraph (2) below and regulation 16 and save as the Commissioners may otherwise allow, a registered person providing a VAT

invoice in accordance with regulation 13 shall state thereon the following particulars –

a - c).....

d) the name, address and registration number of the supplier

5 e - m).....”

8. Regulation 29(2) Claims for input tax.

At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of –

10 (a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;....

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold or provide such other evidence of the charge to VAT as the Commissioners may direct.....”

15 *The evidence produced by the appellant*

9. Mr Nadin gave oral evidence that he is now aged 53 and had previously worked in the haulage industry since the age of 21. He is working in haulage again now and living abroad. He started trading as “In 2 Trucking and Waste Recycling” (“In 2 T”) just before he registered for VAT on 14 September 2009. The business activity of “In 2 T” was described on the registration form as ‘Transport of goods mainly recycle waste and metals.’ Prior to running this business he had not worked in the scrap metal trade. His business address was given as an address in Rotherham but he also rented premises in Sheffield.

10. Mr Nadin started working in the scrap metal business through a contact who also advised him to instruct Abrahams as his accountants. He arranged for his sister to do paper work in connection with the business.

11. The turnover for “In 2 T” increased significantly from £6,570 in the period 11/09 and £4,890 in 02/10 to £615,322 for the period 05/10 and then £2,066,171 in 02/11.

12. Mr Nadin agreed that 90% of the increase in turnover in his business had come about because of trade with one particular supplier, which he thought was called 4E Distribution (UK) Limited (“4E”).

13. Mr Nadin began trading with 4E because he met a driver called Dave who said that he was working for 4E. Dave would ring Mr Nadin to say he had some scrap, Mr Nadin rang a contact to find out what price he could get for it, he then rang Dave back, agreed a price and arranged to meet Dave somewhere for delivery. The meeting place was often the premises of the contact to whom Mr Nadin was selling on the

scrap, because they had a weighbridge big enough to weigh the vehicle being used. Once the weight was confirmed, Mr Nadin got paid in cash by the contact and then he paid Dave in cash. The counting of cash often took place in the cab of one of their vehicles.

5 14. Mr Nadin got an invoice either handed to him by Dave or by fax. The invoices all showed the address of 4E as Rohan House, 160 Hawthorne Way, Shelly, Huddersfield. Mr Nadin believed that this was the legitimate address of the company who had made the supplies to him, through Dave. He had been taken on one occasion to what he was told was Rohan House, and there was an office block and a car park.  
10 He met Dave in the car park on that occasion. He had not been driving himself and had not checked the address of where they were.

15 15. On 19 January 2011, Abrahams wrote to HMRC supplying documentation which they say led Mr Nadin to believe he was trading with 4E and that the transactions were valid. The documentation included

(1) A copy 'Certificate of Registration for VAT', issued on 28 November 2005, by HM Customs and Excise, for 4E showing the VAT number and address as Rohan House

(2) A copy 'validation of VAT' for "4E" dated 13 July 2010, from Europa. This gave a VAT registration number and gave the address as Rohan House.  
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(3) A circular letters dated 9 January 2010 and 17 June 2010 which gave the company address as Rohan House.

(4) A 'Certificate of Incorporation on change of name' referring to 4E and issued by Companies House on 5 June 2006.

25 *Evidence produced by HMRC*

16. Russell White, an officer with HMRC , gave oral evidence in accordance with his statement dated 20 September 2013. He had met with Mr Nadin, his sister and his accountant on 6 August 2010.

17. Russell White carried out a company's search which showed that Ms C S Fallaize had been a company director of 4E from 26 May 2004 to 19 March 2010. Her home address was shown as Rowan House, 160 Hawthorne Way, Shelly, Huddersfield. The search recorded that the address ceased to be the registered office of 4E in February 2007.  
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18. Mr White communicated with Ms Fallaize by email. She confirmed that she had been a director of 4E but had instructed Axholme House (Company secretaries) to sell the business in 2009. She understood it had not been sold until 2010. She indicated that Rohan House was her home address and it had never been used for the supply of scrap metal. Mr White arranged for the address to be visited by another  
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HMRC officer and he confirmed that it was a residential property. A photograph of the street was produced, which also confirmed a residential street.

*Findings re validity of invoices.*

5 19. On balance we found that that the evidence showed that Rohan House was a residential property from which no supply of scrap metal had been made. The photograph showed residential property and Mr Nadin did not challenge this. He accepted that, although he thought he had been to the address, it cannot have been that address.

10 20. We were also satisfied that the registered address of 4E had ceased to be Rohan House in February 2007. On balance we preferred the evidence from the Companies House search and found this to be accurate. We found the Europa search contained information which was not up to date at the time the search was made in July 2010. Whilst this was not the fault of Mr Nadin it does not validate the invoices.

15 21. We therefore found that, at the time the transactions were supposed to have taken place 4E were neither registered at the address shown on the invoices nor did they operate a supply of scrap metal from that address. We find the invoices from 4E were not valid tax invoices such as to enable Mr Nadin to be able to reclaim input tax.

*Could HMRC have exercised discretion?*

20 22. The powers of the Tribunal, in considering the exercise of a discretion are supervisory only. We are limited to considering whether or not HMRC acted reasonably in the exercise of their discretion. Unless we find that they acted in way in which no reasonable decision maker could have acted, the assessment has to be upheld and the appeal dismissed.

25 23. Mr Nadin did not produce any other evidence to support the supply of the scrap metal to him by Dave. There was no documentary evidence of the cash payments. All payments had been made in cash and there were no bank withdrawals which corroborated the cash payments. There was no weighbridge documentation. There was no one to confirm who Dave had been working for or where he had obtained the scrap. There was no paperwork to support the onward supply of the scrap metal to anyone else.

35 24. Mr Nadin stated that he did not know he could produce any other paperwork. By the time he realised he should have done so, all his additional paperwork was no longer available. He had left it in a shed at his rented depot and when he handed over the business to someone else the shed was removed. Mr Nadin could not remember exactly when he handed over the business but thought it was sometime in 2011. HMRC have recorded that "In 2 T" was deregistered for VAT in March 2011.

25. HMRC raised the assessment on 15 October 2010. The letter giving details of this was sent to Abrahams, who were at that time acting for Mr Nadin. The letter gave details of the possibility of other evidence being taken into account to show that the

supply/transaction had taken place. Abrahams had been recommended to Mr Nadin by McGrails to whom Mr Nadin stated that he sold most of the scrap. We find that it would have been reasonable, at that time, for Abrahams to advise Mr Nadin to get further paperwork from McGrails or to get copies of weighbridge tickets, so that these could be sent to HMRC. Mr Nadin did not dispose of his business until the following year and he could have obtained additional paperwork from his shed whilst he still operated his business.

26. HMRC carried out a review and considered the HMRC Statement of Practice on 'Input deduction without a valid VAT invoice'. The result of that review is in a letter dated 12 September 2011 from David Waterhouse, an officer of HMRC.

27. We find that the oral evidence of Mr Nadin that 'he obtained supplies from Dave' was not evidence, sufficient in itself, to allow a reasonable HMRC officer to make a decision to allow the input tax to be claimed. No other evidence was produced. We find that the review has reasonably considered all the aspects of the Statement of Practice. We find that the decision to assess was reasonably made by HMRC.

28. In respect of the penalty we consider that the checks carried out by Mr Nadin were not adequate. He did not know the surname of Dave, who was his only contact with 4E. The letter heading could easily have been used by someone else, as turns out to be the case. We found Mr Nadin's explanation that he thought he had been to Rohan House in order to pay Dave some money, but now realises, as he was not driving, that it must have been somewhere else, to be not credible.

29. We find that Mr Nadin was careless in carrying out investigations into 4E. The penalty has been properly applied.

25 *Decision*

30. We find that the invoices were invalid, the decision of HMRC not to use their discretion to allow the input tax was reasonably made and the penalty is appropriate. The appeal is dismissed

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.

**BARBARA J KING  
TRIBUNAL JUDGE**

**RELEASE DATE: 24 April 2014**