



TC03618

Appeal number: TC/2013/00946

*VALUE ADDED TAX - denial of credit for input tax – whether evidence
that appellant had incurred input tax – no - appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BUKHARA RESTAURANTS LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GUY BRANNAN
MRS GILL HUNTER**

Sitting in public at Bedford Square, London WC1 on 2 May 2014

Nevzat Ekrem, Hurkan Sayman & Co, Accountants, for the Appellant

Barry Sellers, Presenting Officer, for the Respondents

DECISION

Introduction

5 1. This is an appeal against the decision of the Respondents ("HMRC") to refuse a voluntary disclosure claiming input tax for the VAT period 11/11 in the amount of £9160. The decision was notified to the appellant by HMRC in a letter dated 3 April 2012. The appellant also appeals against an assessment for the VAT period 02/12 in relation to input tax claimed by the appellant of £8,640.

10 The Evidence

2. Written evidence (correspondence and documents) was contained in three folders of documents. In addition, two HMRC officers (Mr Patel and Mr Mohidin) provided witness statements, gave supplementary evidence in chief and were cross-examined. The appellant did not call any witnesses.

15 The Facts

3. The appellant carries on business as a restaurant in central London and has been registered for VAT since 22 November 2010.

4. The appellant's VAT return for the VAT period 11/11 was submitted on 5 January 2012 and showed a VAT liability of £21,017.45.

20 5. A few days later, on 13 January 2012, the appellant submitted a voluntary disclosure for the VAT period 11/11. The voluntary disclosure concerned two invoices from Kite of Greenwich ("Kite"). The two invoices concerned alleged refurbishment work done at the restaurant over the period 1 September 2011 to 30 November 2011. On 20 January 2012 the appellant made a payment of £11,857.45 in
25 respect of its VAT period 11/11. This figure was the result of the amount of VAT for which the appellant would have been liable in that period less the amount of the input tax claimed in the voluntary disclosure.

30 6. The first invoice was dated 20 October 2011. This invoice quoted Kite's company registration number and VAT registration number. As far as material it read as follows:

"Tailings	£13,500.00
Painting	£3,800.00
Plumbing	£4,000.00
SUBTOTAL	£21,300.00
35 VAT 20%	£4,260.00
TOTAL	£25,560.00"

7. The second invoice was dated 18 November 2011. The description of the works was:

	"Generating 2 new bars	£8,500.00
	Electricity system (both floors)	£12,500.00
5	Wooden Flooring (Ground Floor)	£3, 500.00
	 SUBTOTAL	 £24,500.00
	VAT 20%	£4,900.00
	TOTAL	£29,400.00"

10 8. It also quoted Kite's company registration and VAT registration number.

9. In the appellant's voluntary disclosure dated 11 January 2012 the appellant stated that:

"The invoices for this expenditure should have been included in the VAT Return but were delayed in the post."

15 10. On 10 February 2012, HMRC (Mr Patel) wrote to the appellant requesting further information in relation to the two invoices. In particular, Mr Patel asked for details of the contract between the appellant and Kite in order to have full details of the works carried out at the restaurant. In addition, Mr Patel requested documentary evidence in support of the payments made to Kite.

20 11. No reply having been received, Mr Patel wrote again to the appellant on 2 March 2012 requesting the information he had asked for in his letter of 10 February. Mr Patel received no reply to this letter and on 3 April 2012 wrote to the appellant informing it that because the requested information had not been supplied the input tax claim was rejected.

25 12. Meanwhile, on 15 November 2012 another HMRC officer, Mr Mohidin, visited the appellant at the accountant, Hurkan Sayman's premises for a routine examination of the appellant's records and subsequently had discussions with the appellant's accountants. In a letter dated 21 November 2012, following his visit, Mr Mohidin asked for details of a purchase invoice in the VAT period 02/12 which was described
30 as being for "General Expenses" for the net amount of £43,204.17 plus VAT of £8,640.83. Mr Mohidin also asked for details of payment relating to this purchase invoice. He warned the appellant that a VAT assessment might be raised if the appellant did not respond.

35 13. The appellant's accountants wrote to HMRC on 28 November 2012. The letter contained:

(1) a copy of a schedule of works carried out at the appellant's restaurant by Kite;

5 (2) a copy of the trade creditors ledger of the appellant with Kite. In relation to this matter, the letter explained that £37,000 had been paid in cash by the appellant and £15,000 by the appellant's director: "therefore no further documents are available in respect of payments. The remaining balance due is held back as retention."

(3) A copy of an electrical inspection report that was carried out after the completion of the alleged building works by Kite.

14. The schedule of works was undated and contained Kite's VAT registration number.

10 15. Mr Ekrem told us that the purchase ledger of the appellant in respect of Kite was prepared by a member of his staff. The ledger recorded a series of payments as follows:

Date	Reference	Details	Due Date R (sic)	Asset (Dr)	Liability (Cr)	Balance
5/06/11	JRN 000050	Payment by I uzun (sic)		5,000		5,000
20/10/11	PIN 001667		19/11/11		25,5680	
25/10/11	PAY 000638	Kite		5,000		-15,580
11/11/11	PAY 000632	Kite		2,000		
18/11/11	PIN 001668		18/12/11		29,400	
20/11/11	PAY 000639	Kite		5,000		-37,960
23/12/11	PAY 000633	Kite		5,000		- 32,960
2/01/12	PAY 000638	Kite		5,000		
14/01/12	PAY 000634	Kite		5,000		
29/01/12	PAY 000636	Kite		5,000		-17,960
17/02/12	PAY	Kite		5,000		-12,960

	000637					
12/03/12	PAY 000640	Kite		5,000		-7,960
5/04/12	PAY 000641	Kite		5,000		-2,960
Balance						-2,960

16. In his evidence Mr Mohidin noted that the payments in the ledger did not match the two invoices from Kite produced by the appellant.

17. On 4 December 2012 Mr Mohidin wrote to the appellant's accountants requesting the following information in relation to the voluntary disclosure for the VAT period 11/11:

- (1) quotations obtained from Kite (and other companies) before the work was carried out;
- (2) correspondence between the appellant and Kite relating to the renovation work;
- (3) due diligence carried out on Kite together with an explanation why the appellant decided to employ Kite; and
- (4) acknowledgement of receipt of payments from Kite, together with statements of account from Kite on the basis that there was still an outstanding balance.

18. This letter also noted that Mr Mohidin was still awaiting information in relation to the "General Expenses" invoice in relation to the VAT period 02/12. However, when no reply had been received Mr Mohidin raised an assessment on 17 December 2012 for £8,640.

19. The appellant's accountants sent an e-mail to Mr Mohidin on 29 January 2013 providing additional information in relation to the assessment (i.e. in relation to the invoice for the VAT period 02/12). Mr Mohidin observed that the amounts and invoices provided were different from the input tax claims on the return for the VAT period 02/12. On 30 January 2013 Mr Mohidin e-mailed the appellant's accountants asking them to explain the discrepancy (the summary sheets with the additional information totalled input tax of £7,573.86) and noted that all the invoices were dated May to July 2011 but had been claimed in respect of the VAT period 02/12.

20. The appellant's accountants replied on 8 February 2013 stating that the input tax claimed in respect of the VAT period 02/12 related to a number of purchase invoices not claimed on earlier VAT returns. Mr Mohidin asked for evidence to substantiate the accountants' claims.

21. Mr Mohidin received further information from the accountants on 1 May 2013. Mr Mohidin replied on 3 May 2013 stating that evidence of payment by the appellant had not been provided and also noting that a number of purchase invoices had, in fact, been previously claimed in the VAT period 08/11 and, further, that a number of purchase invoices were not valid VAT invoices.

22. At the hearing, Mr Ekrem conceded on behalf of the appellant that a number of the invoices claimed in respect of the VAT period 02/12 had been claimed in earlier periods and that in respect of a number of other invoices valid VAT invoices or other documentation had not been supplied. In the event, therefore, Mr Ekrem accepted that the appellant's claim for input tax in that period should be reduced to £300.03. We noted that in the schedule of invoices in respect of the input claim for the VAT period 02/12 all the invoices were dated May or June 2011.

23. We were also shown a director's loan account which we were told related to Mr I Uzun, a director of the appellant. This indicated that Mr Uzun had made a number of payments to suppliers. However, we were not shown evidence which indicated that Mr Uzun had been reimbursed by the appellant.

24. Mr Patel's evidence, in response to a question from the tribunal, was that Kite's invoices were dated prior to the date on which Kite was notified of its registration for VAT. The notification of its VAT registration was made to Kite on 24 November 2011. There was no evidence in relation to the effective date of Kite's VAT registration. Mr Sellers believed that the effective date of Kite's registration for VAT registration was 1 November 2011, but this was not part of the evidence presented to us.

Legislation

25. The relevant UK statutory provisions are sections 24-26 of and Schedule 11 to the Value Added Tax Act 1994 ("VATA") and Regulations 13, 14 and 29 VATR. Sections 24-26 VATA establish the tax-payer's right to deduct input tax from the output tax he is liable to pay, subject to such conditions as the Commissioners shall prescribe by regulation. Regulation 29(2) VAT Regulations 1995 states that, at the time of claiming an input tax credit, the taxable person shall hold the document which is required to be provided under regulation 13 (subject to the proviso mentioned below).

26. Regulation 13 states that a taxable person making a supply of goods shall provide his customer with a VAT invoice which contains the particulars specified in regulation 14(1). Regulation 14(1), in turn, states the particulars which must be stated on the invoice, which include:

- '(g) a description sufficient to identify the goods or services supplied,
- (h) for each description, the quantity of the goods or the extent of the services,
- and the rate of VAT and the amount payable, excluding VAT, expressed in any currency...'

27. If, however, the tax-payer does not hold an invoice that complies with Regulation 14(1), the proviso to Regulation 29(2) is engaged. The proviso states:

5 ‘where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claim shall hold or provide such other evidence of the charge to VAT as the Commissioners made direct’.

28. Furthermore, paragraph 4 Schedule 11 VATA provides that HMRC may, as a condition for allowing any input tax, require the production of such evidence relating to VAT as they may specify.

Discussion and Decision

The VAT period 11/11 input tax claims

29. Essentially, Mr Sellers, for HMRC, argued that the two Kite invoices were not credible. In the first place, there was no reliable evidence that the appellant had paid the sums due under the invoices. Secondly, the invoices had been issued prior to the date on which Kite had been notified of its VAT registration (24 November 2011) and yet they contained Kite's VAT registration number. The appellant had failed to provide satisfactory evidence to substantiate its claim to input tax notwithstanding repeated requests to do so. The information provided by the appellant in support of its claim was not sufficient for HMRC to conclude that the supplies referred to on the two invoices had taken place or that they had been supplied for the purposes of the appellant's business.

30. Mr Ekrem, for the appellant, argued that the information required by HMRC to substantiate the appellant's claim for input tax was not relevant to a small company of the size of the appellant. In relation to the dates of the two invoices and the VAT registration number shown on those invoices, it was not clear whether the VAT number quoted on the invoices was the correct VAT number nor was it clear what was the effective date of Kite's registration for VAT.

31. In our view, HMRC's decision to disallow the appellant's claim for input tax in respect of the two invoices from Kite in the VAT period 11/11 was correct.

32. We consider that it was very strange indeed that the appellant should have paid over £40,000 to Kite in cash without obtaining some form of receipt or statement of account. The purchase ledger prepared by a member of Mr Ekrem's staff and set out in paragraph 15 above was presumably based on information supplied by the appellant and there was no indication that this had been subject to any independent verification. Moreover, the cash payments in the ledger did not appear to match the amounts due on the invoices.

33. Furthermore, the fact that the invoices were dated prior to the date on which Kite was notified of its VAT registration indicates that the invoices were not genuine. It is true that there was no evidence before us to indicate the effective date of Kite's

VAT registration (although Mr Sellers understood this to be 1 November 2011), but it is hard to understand how Kite could have included its VAT registration number on its invoices prior to it being notified of its registration.

5 34. For these reasons, we have reached the conclusion that HMRC were justified in treating the two Kite invoices as lacking in credibility.

10 35. In addition, we consider that HMRC acted reasonably, for the purposes of Regulation 29 (2) VAT Regulations, in declining to accept the voluntary disclosure for the period 11/11 on the basis of the additional documentation supplied by the appellant. The undated schedule of works prepared by Kite was undated and did not fully correspond with the two invoices. As we have indicated, from the cash ledger compiled by the appellant's accountants it did not seem to us that the payments required under the two invoices had been made.

36. Accordingly, we consider that HMRC were correct to deny the appellant's claim for input tax in respect of the two Kite invoices in the VAT period 11/11.

15 *Invoices in the VAT period 02/12*

37. As we have seen, Mr Ekrem conceded on behalf the appellant that most of the original input tax claim of £8,640.83 for "General Expenses" in the VAT period 02/12 could not properly be claimed—either because some of the invoices had been claimed in earlier periods or the amounts claimed were not supported by valid VAT invoices. Indeed at the hearing Mr Ekrem reduced the claim for the VAT period 02/12 to input tax of only £300.03. HMRC had requested additional evidence from the appellant to ensure that the amounts claimed as input tax in the VAT period 02/12 had not been claimed in earlier periods. Mr Sellers argued that this information had not been supplied. We agree and, furthermore, would need to be satisfied that the amounts related to the appellant's business before allowing the claim for input tax in respect of these amounts. We therefore consider that HMRC have acted reasonably and correctly in refusing to allow the appellant's claim for input tax made in respect of the VAT period 02/12 (even in the reduced amount of £300.03).

Decision

30 38. For the reasons given above, we dismiss this appeal.

35 39. 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.

**GUY BRANNAN
TRIBUNAL JUDGE**

5

RELEASE DATE: 20 May 2014