



TC03766

Appeal number: TC/2013/00369

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

VAT – Strike out application – VAT treatment of supplies made to Appellant for works on listed building – VAT contested by Appellant not supplier– whether HMRC gave decision to Appellant against which appeal lies – HELD – Appellant’s claim struck out on basis that no appealable decision - subject to Directions to make full statement of case to HMRC with request for decision against which appeal could be made.

MR R G MORFEE

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE RACHEL SHORT
MR IAN PERRY**

Sitting in public at Vintry House, Wine Street Bristol on 21 March 2014

Mr Morfee the Appellant in person

Mr Priest instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondents

DECISION

5 1. This is an appeal against a strike out application under Rule 8(2) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (“the Tribunal Rules”) by HMRC on 22 March 2013 in respect of an appeal made by Mr Morfee on 3 January 2013. That appeal related to a letter from HMRC of 11 December 2012 concerning the VAT treatment of a supply made to Mr Morfee of works done to the roof of a barn owned by him in 2011.

10 2. HMRC contends that Mr Morfee has no right of appeal to this Tribunal because HMRC has not issued a “decision” in his favour against which an appeal lies.

3. Mr Morfee contends that the letter to him from HMRC of 11 December 2012 is a “decision” for these purposes, or in the alternative that no decision is required for an appeal to be made under s 83(1)(b) Value Added Tax Act 1994. (“VATA 1994”)

15 **The Law**

4. The relevant legislation is at 83(1) and (2) VATA 1994 and s 83G(1)(a)(ii) VATA 1994:

S 83(1)

20 (1) *Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters-*

(a)

(b) *the VAT chargeable on the supply of any goods or services, on the acquisition of goods from another member State, or, subject to section 84(9), on the importation of goods from a place outside the member States;.....*

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S 83(2)

(2) *In the following provisions of this Part, a reference to a **decision** with respect to which an appeal under this section lies, or has been made, includes any matter listed in subsection (1) whether or not described there as a decision.*

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S 83G(1)(a)(ii)

(1) *An appeal under section 83 is to be made to the tribunal before-*

(a) *the end of the period of 30 days beginning with-*

35 (i) *in a case where P is the Appellant, the date of the document notifying the decision to which the appeal relates, or*

(ii) *in a case where a person other than P is the appellant, the date that person becomes aware of the decision*

Facts

5. The VAT in question relates to the supply of roofing works made to Mr Morfee by a roofing contractor Ableson Roofing Limited in 2011, as part of works done to convert a barn which Mr Morfee owns. The roofing contractor charged VAT on the works on the basis that the roofing works were standard rated maintenance, but Mr Morfee thought that the roofing work should be zero-rated as an “approved alteration to a listed building”, because living accommodation was being created from a disused barn. Despite Mr Morfee’s requests, the roofing contractor refused to zero-rate the supply or speak to HMRC to establish what the correct VAT treatment was. The amount of VAT in dispute is £1,889.
6. Mr Morfee’s appeal of 3 January 2013 also referred to £67.93 of disputed VAT relating to an under-floor heating kit which was installed at the same property and about which Mr Morfee had also been in correspondence with HMRC in July 2012. This aspect of Mr Morfee’s appeal has been withdrawn since the £67.93 of VAT has been re-paid to him on an “exceptional basis” by HMRC.
7. Mr Morfee approached HMRC about the VAT treatment of the roofing works on 16 October 2012 so that he could re-claim the VAT which he thought had been wrongly charged by Ableson Roofing Limited. HMRC treated Mr Morfee as a “non business taxpayer” for the purposes of Notice CAP 1 which is HMRC’s policy statement about when they will give advice to customers.
8. HMRC gave Mr Morfee general advice about the treatment of supplies made relating to listed buildings and referred to public guidance in the relevant area in a letter to him of 11 December 2012. That letter stated, so far as relevant to the roofing works, that;
- “it is the supplier’s responsibility to ensure that the correct rate of VAT is applied to their services. Any ruling that we may issue can only be relied upon by the recipient, hence a ruling issued to a customer cannot be relied upon by the supplier. We will only issue a ruling in cases of genuine uncertainty – for example where a specific point is not covered by our published guidance.*
- In this instance I believe we have comprehensive guidance relating to alterations, repair and maintenance to listed buildings. Public Notice 708 section 9 sub paragraph 9 sub paragraph 9.3.1 gives an explanation of what is considered to be works of repair and maintenance and sub paragraph 9.3.2 gives examples of repair and maintenance work and alterations. I have also enclosed a copy of our internal guidance VCONST09700.....*
- I would invite you to consider the above guidance and, if you find there is any point you are still unsure of, please write to me again explaining which part is unclear so that I may provide you with clarification of how it applies to the supplies you are receiving”*
9. That letter also referred to the disputed VAT on the under-floor heating kit accepting that a decision had been given on that issue and set out Mr Morfee’s right to appeal to the Tribunal within 30 days in respect of that decision.
10. Mr Morfee did not respond to HMRC’s letter of 11 December 2012 asking for further clarification, but appealed against the letter of 11 December 2012 to this Tribunal on 3 January 2013 concerning both the VAT treatment of the supply of the under-floor heating kit and the roofing works. The VAT treatment of the supply of the under-floor heating kit is no longer in dispute.

Respondent's Arguments

11. HMRC said that, on the basis of their policy set out in Notice CAP 1 as a non VAT registered “non – business” taxpayer they would give a “decision” to Mr Morfee only if his query related to a point of law which was unclear, which was not the case in relation to the VAT query which he raised concerning the roofing works. There was clear public guidance about the treatment of roofing works and no genuine uncertainty. No ruling or decision was given to Mr Morfee; their letter of 11 December was general advice only and did not contain specific advice or their opinion on particular facts for a particular taxpayer, referring to public information and internal guidance only. A “decision” would entail specific guidance on specific facts for a particular taxpayer. There was therefore no basis for an appeal under s 83 VATA 1994 which implicitly, if not explicitly, required a decision before an appeal could arise.

12. HMRC also stated that despite what was said in their letter of 11 December 2012, their view was that a decision had not been made in relation to the VAT treatment of the supply of the under-floor heating kit.

13. HMRC also referred to the requirements in s 83G(1)(a)(i) and (ii) that an appeal must be made within 30 days of a “document notifying the decision” to which the appeal relates. There was no such document notifying a decision about the VAT treatment of the supply of roofing works to Mr Morfee’s supplier or Mr Morfee and therefore there was no right of appeal under 83G.

14. HMRC agreed before the Tribunal that if Mr Morfee had waited until he had received a more detailed response from HMRC before appealing to the Tribunal, this would have been treated as a decision against which he would have had a right of appeal.

Appellant's Arguments

15. Mr Morfee argued that as a point of statutory interpretation, his appeal arose under s 83(1)(b) VATA 1994 and there was no specific reference in that provision, unlike in other parts of s 83, to the need for a “decision”, all that was required was that there was an issue of the chargeability of VAT, which was the case in respect of the contested VAT treatment of the roofing supplies made to him.

16. Mr Morfee’s alternative argument was that HMRC had provided him with a decision, being their letter of 11 December 2012. That letter made clear that it was the supplier’s right to decide whether to zero-rate the supplies and offered Mr Morfee a right of appeal within 30 days. He lodged his appeal with this Tribunal within the 30 day time period.

17. Mr Morfee’s view was that his correspondence with HMRC in substance constituted a decision that the supplier’s standard rating of his services should be accepted. HMRC were aware that Mr Morfee disputed the VAT treatment of these services with the supplier but had refused to give him a ruling. At the very least, HMRC’s letter amounted to a decision not to decide on the appropriate VAT rating and that in itself should be treated as an appealable decision.

18. Finally Mr Morfee argued that accepting HMRC's arguments would leave taxpayers like him in a position where they were unable to challenge the correct VAT treatment of supplies made to them, which as a matter of public policy could not be the correct approach and is in defiance of taxpayers' rights enshrined since the 1689 Bill of Rights.

Discussion

19. The Tribunal views this as a case where matters of procedure have been allowed to obscure the real point at issue, being the correct VAT treatment of the supply of roofing works provided to Mr Morfee. The Tribunal has a wide discretion to exercise its powers to override any procedural matters in the interest of justice and in this instance we have concluded that it is not in either party's interest to indulge in lengthy debate about whether an appealable decision is required or existed here.

20. The Tribunal recognises that there is some doubt whether this appeal has been properly brought under s 83 and whether HMRC's letter of 11 December 2012 constitutes a decision against which Mr Morfee has a right of appeal. The Tribunal also recognises Mr Morfee's concern that he should have some means of appealing against VAT which he believes has been wrongly charged to him.

21. On behalf of HMRC Mr Priest made it clear that if Mr Morfee had responded to their letter of 11 December 2012 with more detailed information about the roofing works and the reason why he believed they should be zero-rated, HMRC would have responded with a letter which would have been a "decision" against which Mr Morfee could have appealed.

22. In order to bring this issue to an effective conclusion with least cost to all parties it is decided that the existing appeal be struck out under Rule 8(2) of the Tribunal Rules on that basis that there is no appealable decision in respect of which the Tribunal has jurisdiction, but subject to the following Directions, which were issued with the summary decision on 31 March 2014;

IT IS DIRECTED THAT

23. Mr Morfee should, within 30 days of the release of this decision, provide HMRC with a detailed written description of the roofing work done at his barn conversion and the reason why he considers that the supply of this work should be zero rated. Within 30 days of receipt of Mr Morfee's written description, HMRC should provide Mr Morfee with a written decision setting out their view of the correct VAT treatment of the supply of roofing works, including a statement of Mr Morfee's rights to appeal against this decision and any relevant time limits.

24. These directions were issued with the Tribunal's summary decision on 31 March 2014 and the relevant time limits run from that date.

Costs

25. Mr Morfee made a costs application for his costs incurred to the date of this Tribunal hearing. This appeal has been categorised as a standard case and the circumstances in which costs can be awarded in a standard case under Rule 10 of the Tribunal Rules are limited to situations in which a party has acted unreasonably in bringing, defending or conducting proceedings. The Tribunal does not consider that

HMRC have acted unreasonably in their response to Mr Morfee's actions to date. If a substantive appeal is brought before the Tribunal in respect of the VAT treatment of the roofing works provided to Mr Morfee, any request for costs should take account of the costs of this hearing.

- 5 26. 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
- 10 "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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**RACHEL SHORT
TRIBUNAL JUDGE**

RELEASE DATE: 27 June 2014

