



TC04288

Appeal number: TC/2012/10306

VAT – whether agent or principal - whether agent acting in own name - whether liable to account for VAT on supply - whether evidence of entitlement to input tax – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**DEREK COLLIINGS
t/a ENGINEERING UNLIMITED
- and -**

Appellant

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

Respondents

**TRIBUNAL: JUDGE GREG SINFIELD
MR LESLIE HOWARD IIT(Dip)**

**Sitting in public at Cambridge County and Family Court, East Road, Cambridge
CB1 on 20 January 2015**

The Appellant in person

Martin Priest, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The Appellant (“Mr Collings”) appealed against an assessment, issued by HM Customs and Excise (later HM Revenue and Customs, together “HMRC”) on 5 1 November 2004, for £73,050 output tax underdeclared and input tax overclaimed in VAT accounting periods 01/02 to 07/03. Mr Collings also appealed against assessments, issued on 20 October 2006, for £5,571.98 underdeclared output tax in periods 10/03 to 07/04. Also in October 2006, HMRC issued decisions denying VAT credits amounting to £40,883.09 claimed by Mr Collings in the VAT accounting 10 periods 10/04 to 07/06 and Mr Collings appealed against those decisions.

2. The issue in relation to the assessments for output tax was whether Mr Collings was liable to account for VAT on the supply of certain vehicles acquired in the UK from dealers in other EU member states for Mr Collings’s customers. Mr Collings maintained that he had acted as an agent in those transactions and was not liable to 15 charge and account for VAT on the vehicles which was the responsibility of the customer. In relation to the assessments and decision in relation to input tax, the issue was whether Mr Collings had evidence to establish that he had incurred the input tax. For the reasons set out below, we have decided that Mr Collings’s appeal must be dismissed.

20 Evidence

3. For the hearing, HMRC produced a bundle of documents for the appeal and a further bundle of documents relied on by Mr Collings. There were no witness statements and the only oral testimony was that given by Mr Collings in the course of 25 presenting his case. Mr Collings was not cross-examined by Mr Priest but answered questions posed by the Tribunal as they arose during his submissions. On the basis of the documents and evidence of Mr Collings, we find the facts to be as set out below.

Facts

4. Mr Collings is a sole trader who carries on business under the name Engineering Unlimited from an address in Great Chishill, near Royston, Hertfordshire. Mr 30 Collings registered for VAT with effect from 18 April 1996. On the registration application form, Mr Collings described his business activity as “Engineering consultancy – design – product sourcing”.

5. Mr Collings’s evidence was that, at the time with which this appeal is concerned, he acted as an agent or facilitator to enable his customers to obtain right- 35 hand drive, UK specification vehicles from dealers in other EU member states. He had contacts with motor dealers in Germany, France, the Netherlands and Denmark who had right-hand drive cars to supply to people in the UK. Mr Collings said that he had customers who wanted to buy such cars and he would arrange for the dealers to supply the cars to the customers. He said that he also arranged the transfer of 40 payments for the cars in euros to the dealers on behalf of the customers. Mr Collings said that, when the vehicles arrived in the UK, the customer would collect the vehicle

and would account for the VAT when the customer presented the relevant documents to register the car with the DVLA. He said that he sometimes assisted customers to fill in the forms to register the cars with the DVLA.

5 6. Mr Collings took us through a typical transaction by reference to some documents in his bundle which he said explained his role in the transactions relating to the cars.

7. The first document was a fax, dated 7 July 2002, to Mr Collings at Engineering Unlimited from CMC Vehicle Hire Limited, trading as Euro Connections, (“Euro Connections”) in the Vale of Glamorgan, Wales. The fax stated as follows

10 “Dear Derek,
Please accept this fax as confirmation of our order for:
1 off (sic) Mercedes-Benz ML 270 CDI chassis nos ref: 770595
As supplied from Danish MB Hørsholm A/S
As arranged through Phoenix International
15 We will arrange both deposit payment direct to yourselves and final payment for transfer to dealer will follow once order is confirmed.
Please advise progress of shipping asap.”

20 8. The next document was an undated list of 28 Mercedes-Benz vehicles. It was headed “Mercedes-Benz” and bore the name Mercedes-Benz København AS. Mr Collings said that this was the Danish dealer who supplied the car mentioned in the fax from Euro Connections. Mr Collings said that the list showed that the dealer had that particular car in stock. The list appeared to show that 24 of the cars had been sold to “Phoenix International Autos” (the other four cars were entered in manuscript and did not have anything written in the “sold to” column). Also in manuscript were
25 the chassis numbers of each car. Mr Collings referred us to the entry for a model “MI 270 Cdid” with chassis number 770595 sold to Phoenix International Autos for a price shown as 285,340 Danish kroner (“DKK”).

30 9. Mr Collings then showed us an invoice, dated 11 July 2002, from Phoenix International (not Phoenix International Autos) in Warfield, Berkshire with VAT number 678 7326 81. The invoice was addressed to Engineering Unlimited and referred to a vehicle described as Mercedes-Benz RHD ref: 770595”. The price shown was “£21,557 Incl. of UK VAT @ 17.5% £3772.48”. That description of the price as VAT inclusive appears to have been an error as the invoice showed that the amount payable was £25,329.48 (ie £21,557 plus £3772.48). We assume that “Incl.”
35 on the invoice was a typographical error and it should have said “Excl.”. The invoice stated

“Payment direct to Mercedes importer: MB Hørsholm
Bank details: Danske Bank Hørsholm Denmark”

40 The invoice showed that, using the rate of 11.55 DKK to £1 stated on the invoice, the sterling amount payable to converted into 292,555 DKK.

10. We do not understand why Phoenix International should require Mr Collings to pay an amount of UK VAT to Mercedes-Benz Hørsholm in Denmark. Phoenix International would be required to account for the VAT shown on its invoice and Mercedes-Benz in Denmark would not be required to account for any VAT in either
5 Denmark or the UK. Mr Collings's documents included a letter, dated 12 November 2001, from Mr Hassan Mughal at Phoenix International that set out how they would deal with invoicing and VAT payments. The letter included the following:

10 "We will invoice you and your customers inclusive of VAT + commissions and you are to ensure you pay the gross amount inclusive of commissions and VAT direct to the bank details that we give you on each invoice. We will account for the VAT at source and you will have a VAT invoice from us.

15 You may then invoice the dealers or PP Import directly for the commissions and you will have the choice of either having this paid or credited to an account in your name so that you can use the money for further purchases."

11. Mr Mughal's letter does not clarify matters. We note that, without the VAT, the amount payable to Mercedes-Benz Hørsholm would, using the exchange rate shown on the Phoenix International invoice, be less than the price of the car with chassis
20 number 770595 sold to Phoenix International Autos. That being the case, we do not understand how Phoenix International could account for the VAT without a loss being incurred either by it or by Mercedes-Benz Hørsholm.

12. The bundle of documents produced by Mr Collings contained several invoices from Phoenix International which were addressed to Engineering Unlimited. All of
25 the invoices required payment to be made to bank accounts in Denmark. All of the payments included amounts expressed to be UK VAT. Some invoices, eg those dated 8 April 2002, 8 May 2002, 12 May 2002, 14 May 2002 and 9 June 2002, were for UK VAT amounts only. Nothing in the documents explained why amounts shown on VAT only invoices issued by Phoenix International should be payable to bank
30 accounts in Denmark.

13. Mr Collings then showed us a bank statement from HSBC which related to an account in the name of D J Collings trading as Engineering Unlimited. The bank statement was for the period 26 June to 25 July 2002. The statement showed that £29,000 was received from Euro Connections on 12 July. The statement also showed
35 that a payment of £25,329.87 was made to "Mercedes-Benz Hors" on 15 July. The payment was confirmed by HSBC in a letter, dated 15 July, to Mr Collings which showed that the payment had been made in Danish kroner, as 292,669 DKK, transferred to the account of Mercedes-Benz Hørsholm AS at Danske Bank, Hørsholm. The letter showed the details of the payment as "ML270 770595 FIN AC
40 PAYT LESS DEPOSIT". We note that an earlier entry in the HSBC bank statement showed a payment of £2,000 to Mercedes-Benz on 10 July. A letter, dated 10 July, from HSBC to Mr Collings confirms that the payment of £2,000 was transferred, as 23,012 DKK, to the account of Mercedes-Benz at Danske Bank, Hørsholm. The letter showed the details of the payment as "ML270 770595 E320 CDIT 425299
45 DEPOSITS".

14. We conclude that the payment by Mr Collings to Mercedes-Benz Hørsholm A/S on 10 July related to the deposits for the purchase of two cars and included the deposit for Mercedes-Benz ML 270 CDI chassis number 770595. We also find that the payment on 15 July was the payment of the balance of the purchase price for the Mercedes-Benz ML 270 CDI chassis number 770595 and did not relate to any other car. There are several aspects of the payments that we do not understand. We have already mentioned the fact that the payment to Mercedes-Benz Hørsholm A/S included UK VAT. Including the UK VAT, the balance paid on 15 July was for more (by 39 pence and 114 DKK) than the full price shown on the Phoenix International invoice and for even more (by 7,329 DKK) than the full price shown on the list of Mercedes-Benz København AS. It appears that, taking account of the fact that a deposit had already been paid, the payment by Mr Collings on 15 July 2002 resulted in Mercedes-Benz Hørsholm A/S receiving considerably more than the real, ie net, price of the car as shown on the Mercedes-Benz København AS list and the Phoenix International invoice. We cannot determine with certainty by how much more as we do not know the how much of the deposit payment related to Mercedes-Benz ML 270 CDI chassis number 770595 (although we assume half of the payment, ie £1,000 or 11,506 DKK)

15. Finally, Mr Collings showed us an invoice, dated 9 July 2002, from Engineering Unlimited to Mercedes-Benz Hørsholm A/S in Hørsholm, Denmark. The description on the invoice was as follows:

“Commission payment for the following:

Mercedes-Benz ML 270 CDi RHD UK Spec chassis nos: 770595

In respect of order placed through Pheonix (sic) International for

UK customer Euro connections”

The invoice was for 18,000 DKK. No VAT was charged on the commission. The invoice stated that the payment was “to be made direct to bank details as shown below” but the box headed “bank details for payment” was blank. Mr Collings told us that he was never paid the commission by Mercedes-Benz Hørsholm A/S.

16. We note that the commission of 18,000 DKK roughly equates to the difference between the amount paid by Mr Collings to Mercedes-Benz Hørsholm A/S, namely 304,175 DKK (being 292,669 DKK and an assumed 11,506 DKK) and the price of 285,340 DKK shown on the Mercedes-Benz København AS list. Mr Mughal’s letter (see [10] above) stated that Mr Collings should pay the gross amount inclusive of commission and VAT direct to the Danish dealer’s bank account and that Mr Collings could then invoice the dealer directly for the commission. It appears that this is what happened in this transaction. It is clear, however, that if the excess paid to the dealer were paid to Mr Collings, who says it was not (and we have no reason to doubt that statement), then there would be no money left with Mercedes-Benz Hørsholm A/S or, more pertinently, Phoenix International with which the latter could pay the VAT liability on the supply invoiced to Engineering Unlimited.

17. We were not shown any invoice from Mercedes-Benz Hørsholm A/S in respect of Mercedes-Benz ML 270 CDI chassis number 770595. Further, the bundle of

documents produced by Mr Collings did not contain any invoices from any dealer in an EU Member State.

18. Mr Collings also showed us another invoice issued by Engineering Unlimited to Mercedes-Benz Hørsholm A/S in Hørsholm, Denmark. The invoice was dated
5 22 January 2003. The invoice was for a deposit of 243,360 DKK and the description included the following:

10 “Please note that this payment includes our commission payments for
The (sic) sales that we have brokered between our UK customers and
the UK spec cars you have offered for sale and is to be held in an
account in our name.”

19. Mr Collings said that this showed that he had an account with Mercedes-Benz Hørsholm A/S.

20. Between October 2003 and September 2004, HMRC tried to visit Mr Collings on six occasions with a view to inspecting his records to verify his VAT returns. On
15 each occasion, Mr Collings cancelled the visit for various different reasons. A visit took place in September 2004. At that visit, Mr Collings did not have any sales invoices for inspection. The records available for inspection were incomplete and those records that were examined revealed anomalies: the output VAT declared on Mr
20 Collings’s VAT returns did not match the corresponding entries in the records presented; errors had been made in making claims for input tax; and the bank statements showed that deposits into Mr Collings’s business bank accounts were in excess of the value of sales that had been declared. At the visit, Mr Collings accepted that his records were incomplete and stated that he intended to change his accountant, rectify any errors found in his records and then meet with HMRC again.

21. On 27 October 2004, HMRC sent Mr Collings a letter enclosing various
25 schedules which showed the following:

- (1) differences between total input tax claimed and total input tax shown in the records provided by Mr Collings for the period between August 2001 and July 2004;
- 30 (2) the input tax shown in the records for the period between October 2001 and April 2004 which had been claimed in error;
- (3) some deposits in two Barclays accounts between October 2001 and July 2004 which were unexplained; and
- 35 (4) some deposits in an HSBC account between April 2002 and July 2004 which were unexplained.

22. On 1 November 2004, HMRC issued an assessment for £99,238 VAT in relation to VAT accounting periods 10/01 to 07/03. The amount assessed consisted of output tax which HMRC considered Mr Collings had failed to account for and input tax which HMRC considered he had had overclaimed. The output tax was calculated
40 on the basis that all the unexplained bank deposits, which amounted to £78,498, were payments for taxable supplies. The input tax assessed consisted of amounts (totalling

5 £18,452) claimed in the returns which were unsupported by any evidence in the records and some amounts (£2,288) claimed for items that were not deductible, eg business entertainment, or chargeable to standard rate VAT, eg travel. HMRC later accepted (see [34] below) that some of the bank deposits were not consideration for taxable supplies and that they had been out of time to assess period 10/01. The assessment was amended so that it only related to periods 01/02 to 07/03 and the amount assessed was reduced to £73,050.

10 23. In August 2005, HMRC received a mutual assistance request, ie a request for information under EU Regulations, from the Bundesamt für Finanzen (“the German tax authority”). The request related to a supply of a Chrysler Grand Voyager motor car to Mr Collings by a car dealer in Germany, Autohaus Frank Topfer, on 7 October 2002. The German tax authority asked HMRC to confirm that Mr Collings had correctly applied acquisition VAT on the arrival of the vehicle in the UK and that he had correctly charged VAT on any subsequent sale of the vehicle.

15 24. The German tax authority provided information and documentation in relation to the sale. There was a fax, dated 6 October 2002, from Mr Collings at Engineering Unlimited to the German dealer. In the fax, Mr Collings stated that:

“We are purchasing the [LHD Chrysler Grand Voyager] from you which was ordered by Bluebird Services Ltd.

20 ...

The car is going to be registered and used in France, so will the warranty be OK in this country?

25 If we decide to ship the car to England first, before we go to France, can you please tell me the nearest shipping port to send the car. How much would it cost to get the car to the port?

We are going to transfer a holding deposit this week, and maybe we will come to the showroom to pay the balance in cash on collection, after we have decided the best way to get the car to England.”

30 25. The invoice from the German dealer was addressed to Engineering Unlimited in the UK and dated 7 October 2002. The German tax authority stated that

35 “The vehicle supplied to Engineering Unlimited was a new means of transport, which was probably declared as second-hand vehicles (sic) because it was registered and deregistered in Germany in order to avoid standard taxation in the UK. In fact the vehicle supplied was a new means of transport and a taxable intra-Community acquisition should be declared at Engineering Unlimited. Onward sale by Engineering Unlimited is subject to standard taxation.

The enclosed invoice ... indicates that Engineering Unlimited sold the car to Links Management without VAT.”

40 26. A further fax from Mr Collings at Engineering Unlimited to the German dealer was dated 18 October 2002 in typescript but that was crossed out and 25 October written in manuscript. In the fax, Mr Collings asked the following questions:

“If we decide to have the car shipped to the UK can you please tell us which port you sail from in Germany and which port of arrival in the UK. Once you have the full payment at your bank, how long do you estimate it will take for the car to arrive in the UK?”

5 Is it possible to order an English handbook for this car? Even though my customer is moving to France, he is English and would like to be able to read the hand book, as he does not read German!”

There was a postscript to the fax in manuscript which said: “We need an invoice in our name.”

10 27. The invoice from Engineering Unlimited to Links Management in London was dated 20 November 2002 and showed that the car was left hand drive. The invoice stated that the price of the car was 30,000 euros “net Germany”. The invoice showed that a deposit of 2,000 euros had already been paid and that the balance of 28,000 euros, converted to £17,721, was payable to Mr Collings’s bank account with HSBC.
15 In the box on the invoice for VAT, it simply stated “N/A”.

28. HMRC made inquiries of Mr Collings who told them that the vehicle had been delivered in France. HMRC communicated this information to the German tax authority but the report stated that the HMRC officer was not sure that this was correct. Mr Collings told us that the car was for his brother-in-law. At the time, his
20 brother-in-law was in the UK but he was about to move to France. Mr Collings said that he found the car and dealt with the dealer direct. The dealer wanted Mr Collings’s name and passport because Mr Collings was going to collect the car on behalf of his brother-in-law. Mr Collings stated that his brother-in-law registered the car in France.

25 29. As a result of the request for information by the German tax authority, HMRC became aware that Mr Collings had purchased a number of vehicles from other EU member states. In a letter dated 21 October 2005, HMRC asked Mr Collings to provide information about some vehicles that he had acquired from other EU member states between April 2003 and March 2005. Mr Collings responded by fax on 24
30 October and asked for the chassis numbers of all the cars, save two, so he could provide the information.

30. Further correspondence was exchanged but Mr Collings did not provide any purchase or sales invoices for vehicles and HMRC were not satisfied with the documents that had been provided. HMRC’s concerns were set out by Mr Smith,
35 HMRC officer, in a letter dated 22 December 2005, which may be summarised as follows:

(1) Mr Collings made a number of acquisitions of vehicles from dealers in other EU member states on which he should have accounted for output VAT and recovered input VAT, which cancelled each other out, before charging and
40 accounting for VAT when he sold the vehicles to his customer. HMRC were not satisfied that the transactions had been properly accounted for in Mr Collings’s VAT returns.

(2) HMRC considered that a number of payments into Mr Collings's bank accounts had not been properly explained.

(3) HMRC required evidence to support input tax claimed in periods 10/04 to 04/05.

5 31. Mr Smith and Mr Collings had a meeting in late January 2006 and exchanged
correspondence thereafter. Mr Collings instructed accountants to deal with HMRC's
inquiries. On 23 March 2006, Mr Smith wrote to Mr Collings's accountant to ask for
further information in relation to vehicles purchased by Mr Collings as well as the
evidence of certain input tax claims made by him. Approximately one month later,
10 the accountants wrote to Mr Smith to say that they had been informed that Mr
Collings was seriously ill and would be incapacitated for several months. Shortly
after that letter, the accountants wrote again to say that they would no longer be acting
for him.

15 32. On 20 October 2006, Mr Smith wrote eleven letters to Mr Collings. Each letter
dealt with a different VAT accounting period. Four letters related to VAT accounting
periods 10/03–07/04 and stated that, due to unexplained payments into the bank
accounts and input tax that had been wrongly claimed, Mr Collings's VAT returns for
those periods should be amended. The amendments resulted in £9,941.06 assessed as
payable by Mr Collings. Following a review in 2012, the amount assessed for these
20 periods was reduced to £5,571.98

25 33. Seven of the letters sent on 20 October 2006 related to VAT accounting periods
10/04–07/06, excluding period 07/05. In each of those periods, Mr Collings had
claimed a repayment of VAT ("a VAT credit") under section 25(3) of the VAT Act
1994 ("VATA94"). Each letter denied the claim for input tax in the return and
rejected the claim for a VAT credit. The VAT credits were denied because Mr
Collings had not provided any evidence of entitlement to deduct input tax that would
support the claims. In each case, Mr Smith simply reduced the VAT credit to nil and
did not assess Mr Collings for any output tax that was due as a result of the input tax
being disallowed. The VAT credits refused amounted to £40,883.09.

30 34. Mr Collings and Mr Smith continued to correspond but progress appears to have
been slow, partly caused by episodes of ill health suffered by Mr Collings and the loss
of his mother. Following a meeting and further correspondence, HMRC accepted that
some of the payments into the bank accounts did not relate to taxable supplies by Mr
Collings and reduced the assessment issued on 1 November 2004. At that point, Mr
35 Collings asked HMRC to review Mr Smith's decision. In his letter of 30 November,
Mr Collings stated that Mr Smith had made a fundamental error in relation to the
obligation to account for VAT on cars imported from the EU for taxable persons.
There was an administrative error by HMRC in dealing with the request for a review
which delayed matters. The conclusion of the review was communicated to Mr
40 Collings in a letter dated 16 April 2012 from Mr Dave Rickaby. The conclusion of
the review was that HMRC's decision to assess Mr Collings for underdeclared output
VAT should be upheld. The review identified, however, that the assessment issued on
1 November 2004 included a period, namely period 10/01, that was out of time and
stated that it would be amended reduced accordingly.

35. Mr Collings appealed to this Tribunal. In summary, his grounds for appeal were that HMRC were wrong to treat him as a principal when he was an agent and, as such, he was not liable to account for VAT on the sales of the vehicles because he was not the supplier of the vehicles. The grounds for appeal did not challenge (as his request
5 for a review had not) the decision that he was not entitled to deduct input tax in those cases where HMRC had not received evidence that input tax had been incurred.

Submissions

36. Mr Collings submitted that he was not required to account for VAT on the sales of cars by dealers in other EU member states to his customers in the UK because he
10 was only an agent or facilitator in relation to the supply. His role as an agent was to bring the customer and the dealer together. They were the principals in the transaction. The dealer supplied the vehicle and issued an invoice to the customer. Mr Collings said that was the reason that there were no invoices from him to his customers who were buying the cars. He said that, as the agent or facilitator, he
15 arranged for the dealer in another EU member state to be paid for the car in euros. When the vehicle arrived in the UK, the customer would collect it and, in the case of cars, would account for VAT and present the relevant documents to register the car with the DVLA. Mr Collings said that the amounts paid into his bank accounts, which HMRC had wrongly treated as payments for supplies of cars by him, were
20 payments by his customers for the dealers. The customer paid the money into Mr Collings's bank account in sterling and he paid the dealer in euros or Danish kroner. In return, he was paid commission by the dealer which was invoiced as normal. Because the dealer was in another EU member state, there was no VAT on his services to the dealer. Mr Collings said that, by treating him as a principal and not an
25 agent, HMRC had made an incorrect assumption that he had supplied the vehicles to the customers when it was the dealers who were the suppliers. Mr Collings said that there were a couple of cases that he had treated differently. One example was the supply of the Chrysler Voyager.

37. Mr Collings produced a number of documents which HMRC had bound into a
30 substantial bundle. It was unfortunate that they were not in chronological order. Mr Collings said that he had documents that proved that he had acted as an agent but he could not locate them in the bundle. After a short break to enable Mr Collings to look for the documents, without success, he applied for the case to be adjourned so that he could find the documents which he believed were at his home or elsewhere. Mr
35 Priest, who presented the case on behalf of HMRC, opposed the adjournment on the ground that the case had been going on for a long time and HMRC and asked Mr Collings to provide all the relevant documents on numerous occasions. After a short adjournment to consider the matter, we refused the application to adjourn the case. Whether Mr Collings was an agent was not a new issue but was central to the appeal
40 and Mr Collings had had plenty of time to ensure that his documents were in order for the hearing. An adjournment at this stage would, in our view, cause an unnecessary delay in an appeal that had already taken a long time to come to a hearing. Further, it appeared to us that, for reasons explained below, even if Mr Collings could establish that he was an agent, it would not assist him in his appeal.

38. In relation to his claims for input tax, Mr Collings said that if he was buying a batch of cars then he would send the money to the dealer and obtain the chassis numbers.

5 39. Mr Priest submitted that HMRC's assessments for output tax were based on their view that a number of payments into Mr Collings's bank accounts related to supplies of vehicles in the UK by him. Such supplies were liable to VAT at the standard rate. Mr Priest observed that Mr Collings did not deny that the bank deposits related to supplies of vehicles to customers in the UK. Mr Collins said that the supply of vehicles from the EU was by the dealer to the customer and he acted as an agent
10 and therefore was not liable to pay UK VAT. Mr Priest said that Mr Collings had provided no documentary evidence to support his claim to have acted as an agent. Mr Priest contended that the invoices provided by the German tax authority suggested that Mr Collings acted as a principal. They showed that there was a sale by the dealer in Germany, Autohaus Frank Topfer, to Mr Collings and a sale by Mr Collings to
15 Links Management in London. There was no evidence to support Mr Collings's assertion that the car had been supplied in France. Mr Priest submitted that, in the circumstances, HMRC had made the amendments and assessments in relation output tax to the best of their judgement as required by section 73 VATA94.

20 40. In relation to the denial of input tax and VAT credits, Mr Priest noted that the grounds of appeal did not mention the input tax issues. Mr Priest submitted that, despite numerous requests, Mr Collings had not provided documentary evidence to show that HMRC's assessments and decisions to refuse his claims for VAT credits were incorrect. Mr Priest contended that HMRC were correct to assess Mr Collings for input tax when his records did not support the claims and no satisfactory
25 explanation or evidence had been provided to support the claims for VAT credits.

Discussion

41. In an appeal such as this, the burden of proof is on the appellant. That means that it was for Mr Collings to satisfy us that, on the balance of probabilities, the decision or assessment appealed against was wrong. In our view, the evidence
30 presented to us by Mr Collings failed to discharge that burden of proof.

42. In relation to the liability to the output tax, Mr Collings relied on his assertion that he had acted as an agent in relation to the supplies of vehicles. The evidence did not establish that he had acted as an agent. On the contrary, the documents provided by the German tax authority showed that Mr Collings acted as a principal in the
35 acquisition and supply of the Chrysler Voyager. The fax, dated 18 October 2002, from Mr Collings to the car dealer in Germany, Autohaus Frank Topfer, made this clear when it said: "We need an invoice in our name." Mr Collings did not dispute that he had dealt with the dealer direct in that transaction and acted as the purchaser but said that he supplied the car in France so it was not liable to UK VAT. There was
40 no evidence to support the contention that the car was delivered in France. Mr Collings's communications with the German dealer referred to the vehicle being shipped to the UK before being taken to France. The Engineering Unlimited invoice for the sale of the car was issued to Links Management in London and made no

reference to delivery in France. The vehicle was a UK specification vehicle configured for driving on UK roads rather than French or continental ones. We conclude that, whether or not it was later taken to France, the vehicle was shipped to and supplied in the UK by Mr Collings. Accordingly, Mr Collings should have
5 accounted for VAT on the acquisition of the vehicle, which he could have recovered as input tax, and charged and accounted for VAT at the standard rate on the subsequent supply to Links Management.

43. We also consider that the documents produced by Mr Collings in relation to the sale of the Mercedes-Benz ML 270 CDI chassis number 770595 to Euro Connections
10 show that he acted as a principal in the transaction rather than as an agent. There is no reference to agent or agency in the transaction documents. The use of the word “commission” can suggest an agency role but the fact that Phoenix International issued a VAT invoice for the car to Engineering Unlimited, not to Euro Connections,
15 is inconsistent with Mr Collings being an agent. The other invoices from Phoenix International addressed to Mr Collings are also inconsistent with agency. It appears to us that the only logical explanation (and we so find) is that Mercedes-Benz Hørsholm in Denmark supplied the car to Phoenix International which supplied the car to Mr Collings who, in turn, supplied it to Euro Connections. The documents and payments relating to Mercedes-Benz ML 270 CDI chassis number 770595 are consistent with
20 the conclusion that Mr Collings was a principal in the chain of supply. There was no evidence in the documents other than the word “commission” that supported Mr Collings’s assertion that he was an agent.

44. In conclusion, Mr Collings has not satisfied us that he was acting as an agent in relation to the supply of the vehicles and we find that he acted as a principal in those
25 transactions.

45. In any event, Mr Collings’s submissions on this point do not assist him in this appeal. Even if Mr Collings had acted as an agent, he would still be liable to account for VAT on the supply of the cars by virtue of section 47 VATA94. The relevant parts of section 47 VATA94 provide as follows:

30 “(1) Where
(a) goods are acquired from another member State by a person who is not a taxable person and a taxable person acts in relation to the acquisition, and then supplies the goods as agent for the person by whom they are so acquired; or
35 (b) goods are imported from a place outside the member States by a taxable person who supplies them as agent for a person who is not a taxable person,
then, if the taxable person acts in relation to the supply in his own name, the goods shall be treated for the purposes of this Act as
40 acquired and supplied or, as the case may be, imported and supplied by the taxable person as principal.
(2) For the purposes of subsection (1) above a person who is not resident in the United Kingdom and whose place or principal place of business is outside the United Kingdom may be treated as not being a

taxable person if as a result he will not be required to be registered under this Act.

(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent.”

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46. The effect of section 47(1) VATA94 (for goods acquired or imported from outside the UK) and section 47(2A) (for goods supplied in the UK) is that an agent who acts in his own name in relation to a supply of goods is treated as a principal. The agent is treated as both receiving and making the supply. Mr Collings said that the dealers in other EU member states issued invoices to his customers and not to Engineering Unlimited. If that were the case then it could be argued that Mr Collings was not acting in his own name in relation to the supply of the car but the evidence does not support that. Mr Collings has not provided any evidence that any dealer invoiced his customers. The evidence relating to invoicing that we have seen showed that Phoenix International in the UK issued invoices to Engineering Unlimited and Mr Collings told Autohaus Frank Topfer in Germany “We need an invoice in our name.” In the light of those invoices and in the absence of any documentary evidence to the contrary, we conclude that, if Mr Collings acted as an agent (which we do not accept), he did so in his own name and was liable to account for output tax by virtue of section 47 VATA94.

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47. In relation to the input tax adjustments and disallowed claims for VAT credits, Mr Collings faced a difficult task in trying to establish that he was entitled to deduct input tax on supplies that took place some years ago and where the records were missing or incomplete. We note that Mr Collings did not spend a great deal of time dealing with the input tax issues. We think that he was right not to do so. Mr Collings did not produce any evidence, such as invoices, which might have shown that he was entitled to claim the disputed input tax. In the circumstances, we find that Mr Collings has not discharged the burden of proof and established that he was entitled to deduct to the input tax. It follows that the appeal against the input tax adjustments and disallowed claims for VAT credits must be dismissed.

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Decision

48. For the reasons given above, Mr Collings’s appeal is dismissed.

Right to apply for permission to appeal

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49. 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.

**GREG SINFIELD
TRIBUNAL JUDGE**

RELEASE DATE: 17 February 2015