



**TC04309**

**Appeal number: TC/2014/03237**

*VAT - s 80(4) VATA - claim for overpaid VAT - claim capped as made more than four years after overpayment - no provision in legislation for reasonable excuse - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROGER SANDERS**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE MICHAEL S CONNELL  
                  MR PETER R SHEPPARD**

**Sitting in public at Alexandra House, The Parsonage, Manchester on 24  
November 2014**

**The Appellant did not attend and was not represented.**

**Mr John Nicholson, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### The Appeal

1. Roger Sanders (“the Appellant”) appeals against HMRC’s decision of 24 February 2014 to refuse a VAT repayment claim totalling £1,199.06 under s 80(4) VATA 1994 (‘VATA’) because the claim is capped under s 80(1A) VATA.
2. HMRC apply for a direction that the appeal be struck out in accordance with the provisions of Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.
3. The grounds for HMRC’s application are that the appeal is without merit in that the Appellant’s claim for repayment was received on 12 February 2014 covering periods from December 2008 to March 2009 and therefore under s 80(4) of VATA, the claim is out of time.
4. The Appellant did not attend the hearing and was not represented. The Tribunal was satisfied that the Appellant had been notified of the date, time and venue of the hearing and that it was in the interests of justice to proceed with the hearing rather than strike out the appeal.

### Background

5. In the VAT period ending 31 December 2008 the Appellant failed to submit properly completed VAT returns. As a result a centrally issued assessment was automatically issued in the sum of £1,000 under s 73(1) VATA. The Appellant duly paid the assessment and did not at any stage seek to correct the assessment by submitting a return.
6. In the VAT period ending 31 March 2009, the Appellant also failed to file a VAT return and was assessed in the sum of £1,400 under s 73(1) VATA, which he duly paid. Again the Appellant did not seek to correct the assessment by submitting a return.
7. On 26 February 2009 the Appellant telephoned HMRC regarding the first assessment and a duplicate 12/08 return was issued to him. In March 2010 the Appellant again contacted HMRC stating that he intended to submit returns for the assessed periods, but these were never received at the time.
8. The Appellant discovered in late 2013 that he had overpaid VAT for period 12/08 in the sum of £475.39 and had overpaid VAT for period 03/09 in the sum of £723.67. The total overpayment was therefore £1,199.06, which is not disputed by HMRC. The Appellant then made a claim for a VAT refund.
9. Section 80(1A) of the VATA states:

“Where the Commissioners-

(1) have assessed a person to VAT for a prescribed accounting period (whenever ended), and

(2) in doing so, have brought into account as output tax an amount that was not output tax due,

5 They shall be liable to credit the person with that amount.”

10. However, under s 80 (4) of the VATA, HMRC are not liable to repay any amount paid to them where the claim was rendered more than four years after the end of the prescribed accounting period in which the assessment was made. Section 80(4) states:

“The Commissioners shall not be liable on a claim under this section —

10 (a) to credit an amount to a person under subsection (1) or (1a) above...

If the claim is made more than 4 years after the relevant date.”

11. As the returns for the periods were not received until 12 February 2014, HMRC was not required to refund any payments made against the assessments for these periods, either by a repayment or by setting off against another period, as they were  
15 submitted more than four years after the end of the prescribed accounting period.

12. HMRC submit that it is the taxpayer’s responsibility to submit VAT returns by the due date. In the absence of a return, s 73 (1) of VATA gives HMRC the power to make an assessment to the best of their judgement in order to establish the taxpayers true liability and create an enforceable debt for that period. As the 12/08 and 03/09  
20 period returns were not received by the due dates, assessments were made based on information available at that time and the £1,000 and £1,400 payments the Appellant made were set-off against those assessments.

### **Appellant’s Case**

13. The Appellant’s grounds of appeal as disclosed in his Notice of Appeal to the  
25 Tribunal are:

“In 2009 I went through an extremely difficult financial year with my new sole trader business.

Towards the end of 2009 my business had to cease trading, in debt, as all my clients either ceased trading themselves or they had stopped using my services. My main  
30 grounds for appeal I believe are mitigating circumstances as to why I was unable to provide final accounts. Poverty and ill health.

It took a long time to finalise all my accounts, then in 2010 I had a spell of very bad ill health when I was on very strong pain killers for a bad hip. The pain killers affected my mental state (Tramadol) and I also had to go in to hospital to have a hip replacement  
35 operation.

This prevented me from getting any employed work. I also had to sign on for Job Seekers Allowance - of which I was entitled to £11.48 per week.

5 It has taken a long time for all the final bits and pieces to be settled in regard to the small business I was running. On several occasions I tried to get final and complete accounts (couldn't afford an accountant) and I had to accept the VAT assessment figures. After really struggling through a period of practical poverty for myself and family, I finally secured a low paid employed position. And after a retrospective look at all my debts - THAT is when I finally realised I had overpaid £1,199.06.

I would like you to consider in my appeal - the last 4 years has been an immense struggle that has left me depressed and desperately struggling to keep home and family together.

10 My actual earnings over the last 4 years have been very low. [The Appellant set out his income for the period April 2009 to April 2013]

Please also consider - I am not requesting the overpayment so I can spend on luxury items, but I want the overpayment to be credited to my existing self-assessment tax bill which I am also still struggling to pay.

15 I request the Tribunal to consider - the last 4 years as significant in this case - as they are the ones I have really struggled through and it is those 4 years I have continually struggled to make repayments of an amount of VAT that turns out not to have been not owed. You cannot imagine the stress I have been under trying to keep to a repayment schedule for an amount that was never actually owed.

20 It was only recently that I managed to spend time to look carefully and with detail and that I am finally getting things back on track.

I'm not and never have been a fancy businessman with a fancy car outside and foreign holidays. I was made redundant in 2006 and tried to build a small business. I am not a tax avoider. Just a normal guy trying to do what's right and pay my bills - please help."

25 The Appellant made no submissions suggesting that the assessments made by HMRC were not made to their best judgement.

### **HMRC's Case**

14. At the hearing Mr Nicholson for HMRC said that there is nothing in the VAT legislation which allows a taxpayer to recover overpaid VAT on the grounds that he had a reasonable excuse for a late claim. Whilst he sympathised with the Appellant the provisions of s 80(4) could not be circumvented. The claim had been made outside the relevant four year period and therefore could not be accepted.

### **Conclusion**

15. As HMRC say, the relevant legislation cannot be disapplied on the grounds of exceptional circumstances or hardship. The Tribunal cannot change the correct legal position because of individual personal circumstances. Similar previous cases heard by this Tribunal have concluded that unfortunate personal circumstances do not provide a reason for circumventing the time limit set by s 80 [*Bartholomew Corvi t/a*

*A & B Corvi Seaview Café*, (TC01595)]. The Tribunal has no discretion to extend the period within which a claim for overpaid VAT should be made under s 80 VATA.

16. The appeal is accordingly dismissed.

5 17. 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.

**MICHAEL S CONNELL**

**TRIBUNAL JUDGE**

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**RELEASE DATE: 4 March 2015**