



TC04359

Appeal number: TC/2013/09604

VAT – whether Tribunal has jurisdiction to consider legitimate expectations arising out of an alleged misdirection by an HMRC officer – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**NICHOLAS JOHN ASPINALL, VERONICA DOLORES Appellant
IMELDA ASPINALL, BENJAMIN ASPINALL AND
GRAEME ASPINALL
T/A
OXFORD RETAIL CONSULTANTS**

- and -

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

TRIBUNAL: JUDGE Barbara Mosedale

**Sitting in public at the Royal Courts of Justice, the Strand, London on 27 March
2015**

Mr S Cakebread, Counsel, for the Appellant

Ms S Spence, HMRC Officer, for the Respondents

DECISION

5 1. The appellants appeal against a decision (dated 26 June 2013) to assess them and the actual assessment (dated 2 July 2013) which assessed them to VAT in 8 periods (08/11 to and including 05/12) amounting to £58,436.

2. The appellants carry on business together as a partnership trading as a management consultancy from premises in Oxford and have been registered for VAT since 2007.

10 **The facts**

3. The appellants made a supply to the University of Warwick which they treated as exempt from VAT. The appellants' case was that Mr Aspinall had been informed by an HMRC officer that the supply was exempt as it was in respect of medical research and funded by the Wellcome Trust.

15 **The hearing**

4. At the hearing Mr Cakebread, on behalf of the appellants, conceded that as a matter of VAT law the supply by his client could not have been exempt as his client was not an eligible body. The only possibly applicable exemption was for the supply of research to an eligible body in Item 1(b) of Group 6 of Schedule 9 to the Value Added Tax Act 1994 but that required the supplier to be an eligible body itself, and he
20 conceded that the appellants were not.

5. The second issue between the parties was whether the assessment could be upheld in circumstances where the appellants had failed to charge VAT to their customer (allegedly) relying on advice from HMRC, which was much later found to
25 be wrong.

6. HMRC's case was that the Tribunal had no jurisdiction to consider this matter. Mr Cakebread, having had his attention drawn to various authorities, such as *Noor* [2013] UKUT 71 (TCC), indicated that he accepted that the weight of authority was against his client on the question of whether the Tribunal had jurisdiction to consider
30 a taxpayer's legitimate expectations arising out of misdirection by HMRC.

7. I find that while there is superior authority that this Tribunal has jurisdiction in some cases to consider legitimate expectations arising out of the lawful exercise of its powers by HMRC, such as in *Oxfam* [2009] EWHC 2078, that does not extend to a situation where HMRC acts beyond its powers, such as by giving a misdirection. This
35 is explained by the Upper Tribunal at [87] of its decision in *Noor*:

5 “[87] In our view, the F-tT does not have jurisdiction to give effect to any legitimate expectation which Mr Noor may be able to establish in relation to any credit for input tax. We are of the view that Mr Mantle is correct in his submission that the right of appeal given by section 83(1)(c) is an appeal in respect of a person’s right to credit for input tax under the VAT legislation....That does not mean that under section 83(1)(c) the F-tT cannot examine the exercise of a discretion, given to HMRC under primary or subordinate legislation relation to the entitlement to input tax credit, and adjudicate on whether the discretion has been exercised reasonably....That is to be contrasted with the case of an ultra vires contract or a claim based on legitimate expectation where HMRC are acting altogether outside their powers.”

15 8. As Mr Cakebread did not seek to persuade me that what the Upper Tribunal said here was wrong or inconsistent with *Oxfam*, I concluded that I had no jurisdiction to consider that part of appellants’ case that it had relied on incorrect advice from HMRC to its detriment.

9. I made no findings of fact as to whether or not there had been incorrect advice from HMRC, nor on any other matter.

20 10. As the appellants had conceded that they were not an eligible body, I dismissed the appeal.

25 11. 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.

30 **BARBARA MOSEDALE**
TRIBUNAL JUDGE

RELEASE DATE: 22 April 2015

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