



TC04408

Appeal number: TC/2010/03441

VAT: input tax refused as invoices stated not to sufficiently describe the goods and services supplied; assessment raised in respect of the disallowed input tax; VAT Regulations 1995, regulations 29, 13(1) and 14(1); whether additional information sufficient to identify the work undertaken – yes..

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**NORTH &
SOUTH GROUNDWORK SERVICES LIMITED**

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE CHRISTOPHER HACKING
PHILIP JOLLY**

Sitting in public at Manchester on 26 February 2015

Mr Nigel Gibbon, Solicitor, of The VAT People appeared on behalf of the Appellant company

Mr Richard Chapman, counsel instructed by the Office of the Solicitor and General Counsel to HMRC appeared for the Respondents

DECISION

5 1. This was an appeal against assessments to Value Added Tax in the sum of £28,476 arising by reason of the Respondents' refusal to accept as satisfactory for VAT purposes sub-contractors' invoices rendered to the Appellant in connection with its work as a groundworks contractor.

10 2. The invoices in question are said by the Respondents not to conform to the requirements of Regulations 14(1)(g) and (h) of the VAT Regulations 1995 in that they failed to state "a description sufficient to identify the goods or services supplied" (14(1)(g)) and/or "for each description, the quantity of the goods or the extent of the services"(14(1)(h))

15 3. The Respondents accept that they have power within Regulation 14 to accept alternative and additional evidence to support the claims to input tax credit but say that no or no proper evidence has been supplied to them by the Appellant or its representatives to satisfy them as to this.

20 4. The background to this appeal concerns a number of contractors who were successfully prosecuted for cheating the public revenue of VAT by raising false invoices that purported to relate to the provision of labour and which contained charges to VAT when, in fact, no such labour had been provided. Substantial prison sentences were imposed on those concerned.

25 5. Four of these contractors had rendered invoices for sub-contract work to the Appellant. They were:

- 30
- Anthony O'Neill Civil Construction ("O'Neill")
 - Civil and Construction (NW) Ltd ("C&C")
 - Radford Construction ("Radford")
 - Granemore Groundwork Ltd (Granemore")

35 6. It is important to make clear that the Respondents have not alleged that the Appellant was in any way involved in the criminal activities of the above companies. What they have asserted is that having regard to the activities of the above businesses they were concerned as to the veracity of the invoices and the underlying supplies where the description of services on the invoices was "vague and imprecise".

40 7. The assessments were upheld on review dated 23 March 2010. The review letter recites objections to specific invoices rendered as follows.

"O'Neill invoices

45 NS/02/06 dated 15 December 2006, for materials, daywork, plant hire and equipment. This is a substantial invoice for £41,193.38 plus £7,208.84 VAT. It does not identify the site at all, or give any dates for these supplies"

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C&C invoices

1358 dated 1 October 2007, for a daywork gang. It does not identify the site at all.

5 1458 dated 30 November 2007 for materials and work done. This is a substantial invoice, for £30,998.42 plus £5,424.72 VAT, but does not identify the site or dates at all. A handwritten note indicates only that it is for “Works carried out in Enfield North London” The note has apparently been added by Mr Heavey.

10 2135 dated 22 February 2008, for a box building gang in Scotland. It does not identify the site further, or give any dates.

Radford invoices

15 373 dated 29 June 2007, for a grab driver. It does not identify the site at all, or give any dates.

420 dated 19 July 2007, for spoil materials, plant and operator hire. The site address is incomplete, given only as “Salford yard”, and no dates are given.

20 The tribunal also notes that some of the Radford invoices do not appear to be dated correctly. Invoice 420 is dated 19 July 2007. However, 396, which should precede it, is dated the day after, 20 July. Similarly, 410, which should precede 420 is dated 27 July.

Granemore invoices

25 36 dated 4 July 2007, for daywork and a mini digger. It does not identify the site except as “Leeds”, which may relate to only one of the workers invoiced for. No dates are given. A separate handwritten note related to this invoice (and numbers 40 and 50 also) gives no further useful information.

43 dated 12 July 2007, for daywork. It does not identify the site at all.”

35 8. On behalf of the Appellant, Mr Gibbon contended that the invoices were, as a matter of law, compliant with the requirements of the Regulations but that in any event his client had gone to some trouble to provide additional information from which a more detailed picture of the work done could be seen. In particular, says Mr Gibbon, the way in which the disputed invoices and the work covered by these correlates to the invoices raised by the Appellant in respect of work undertaken for its customers can be seen and thus supports the legitimacy of the invoices received from the sub-contractors. This additional information had been supplied to the Respondents but was dismissed in the review letter of 23 March 2010 as “incomplete” representing only the Appellant’s supplies to its clients and not evidence of the supplies received by the Appellant from the sub-contractors concerned.

45 9. In addition to the scheduled additional information the Appellant had also supplied site maps and diagrams as well as copies of its invoices to its clients.

50 10. The review letter suggested (not for the first time) that the sort of information for which the Respondents were looking was information which indicated what was supplied; the full address at which the supply was made; by whom the supply was made and when it was made.

11. There was an obvious problem with this not unreasonable request. The sub-contractors who had worked for the Appellant had been the subject of enquiries which had led to criminal prosecutions and subsequent convictions. Some were in prison. It is hardly to be expected that they would be anxious to cooperate in supplying the requested information.

12. What the Appellant had done was to provide, through his advisers, a detailed schedule which showed for each of the subcontractors whose invoices had been rejected as inadequate the following information:

- The date of supply to the Appellant
- The suppliers invoice number
- The identity of the subcontractor
- The input tax
- Job details on supplier's (i.e. the Appellant's) invoice to its customer
- Sales invoice date
- Sales invoice number
- The name of the Appellant's customer
- Job description
- Net invoice price/ output tax/ gross amount invoiced

13. Copies of the Appellant's invoices to its customers were supplied. Site maps and diagrams had also been supplied.

14. The purpose of supplying these additional materials was to demonstrate how each of the subcontractor's invoices found expression in the works which were undertaken by the Appellant and billed to its customers.

15. In the review letter of 23 March 2010 the reviewing officer comments on this additional information as follows:

"The schedule linking subcontractor invoices with North & South's sales invoices does not in itself add any new information. I acknowledge that the handwritten notes on some invoices, such as the partial addresses on some of the Granemore invoices, may have been added (in) the course of preparing the schedule, and in response to Mr Blakeley's comments. They are however still incomplete
The site maps and diagrams and sales invoices raised by North & South are evidence of supplies to its clients. They are not evidence of supplies received by North & South from subcontractors."

16. On behalf of the Appellant Mr Mark Heavey gave evidence to the tribunal. The contents of a written statement of evidence were noted by the tribunal. In this statement Mr Heavey states that he and his wife Lola are 50% shareholders in the Appellant company. Mrs Heavey looks after the administration of the business whilst Mr Heavey deals with the appointment of subcontractors and obtaining work for the business. All groundwork services have to be undertaken by subcontractors as the business does not employ anyone apart from Mrs Heavey. Mr Heavey has contacts in this business field and will ring round to see who is doing what, whether work is available and who might be available to do the work.

17. Mr Heavey states that prior to accepting any subcontractor he obtains as much information as he can including subcontractors' certificates, evidence of employers' liability insurance, verification of company numbers, NI numbers VAT registration and tax references.

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18. In his evidence to the tribunal Mr Heavey was taken to each of the 9 disputed invoices and asked to explain what these related to by reference to the schedule referred to above. The following was noted.

10 **O'Neill invoice NS/02/06**

This relates to work carried out at a yard rented by the Appellant for the purposes of his business. It is a secure storage facility for plant, lorries and other equipment. The invoice covers work concerning secure fencing and the supply of barriers and road signs and cones used in the Appellant's business A diesel storage tank was also supplied. This invoice is a little different from the others as it was in respect of supplies direct to the Appellant and consequently has no corresponding output tax invoice.

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C & C invoices

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Invoice 1358 – Mr Heavey explained that this invoice dated 01/10/2007 covered work on the First Stage of a project at Middlewood Locks. Specifically the work involved the moving of a fibre optics cable installation. This invoice exhibits what is said to be a clear typographical error in that the cost of the daywork gang employed is shown at £5.80 per day whereas the correct charge is £580 per day which when multiplied by the days worked correctly shows the price at £8,120 and VAT at £1,421.

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The corresponding **output tax invoice** for this was invoice no: 77 rendered to McNicholas Construction Services on 18/10/2007 for works at Middlewood Locks, Salford, Manchester. The works which clearly required the services of a road gang are set out in some detail.

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Invoice 1458 – This invoice dated 30/11/2007 relates to work done for the Kelly Group at Enfield in North London. The notations CW and FW respectively refer to work in the carriageway and work in the footpath. Other references are self-evident.

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This invoice relates to services rendered by the Appellant to the Kelly Group and appearing in its **output tax invoice** no:85 dated 15/11/2007. There is a clear reference in both the input and output tax invoices to the provision of traffic management services and equipment.

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Invoice 2135 - This invoice dated 22/02/2008 relates to the building of telecom equipment boxes. The disturbed roadway had to be made good and this is included in the invoiced works. The input tax invoice refers only to the provision of a "Box building gang" for 5 days at £480 (presumably per day). The invoice noted after the words "Box building gang" the word "Scotland" which was thought by Mr Heavey to relate to the fact that a Scots gang was used on the job referred to in the output tax invoice.

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The **output tax invoice** dated 17/03/2008 refers to the supply of "plant and materials" to the contractor James Callaghan, Sons & Co at the Prestwich Hospital Manchester

50 **Radford invoices**

Invoice 373 - This invoice dated 29/06/2007 covers, the tribunal was told, the cost of a grab driver working 5 shifts at a site together with contractors for Southern Electricity in Croydon. Again the work was for the Kelly Group.

The corresponding **output tax invoice** no 57 dated 11/06/2007 indicates shared working in a trench at Croydon as related by Mr Heavey. It includes for a grab lorry and materials. Clearly a driver for the grab lorry was required as suggested in the Appellants input tax invoice.

5 Whilst the tribunal accepts that these two invoices do appear to be related the dates are something of a puzzle. It may have been that the content of the input tax invoice was estimated so as to allow the output tax invoice to be rendered more quickly. The cost of the grab driver would have been known to Mr Heavey as he prepared his invoice to Kelly Group.

10 **Invoice 420** – This invoice dated 19/07/2007 was, the tribunal was told, part of the supplies to McNicholas Construction in connection with a project at 1, Hagley Road and work at Craven Drive. The hotbox referred to holds tar ready for laying. The work was carried out, as very many road works are, at night and at weekends. The hire of a JCB was necessary at the time as the Appellant did not then own one itself. The invoice covers 16 loads of spoil and type 1 MOT (used for road construction) as well as the hire of a JCB and driver. Specific mention is made of the work site as Craven Drive. The “Hot Box is also included in this invoice.

15 The corresponding **output tax invoice** no: 61 dated 02/08/2007 refers to the works at Craven Drive together with other works at other addresses.

20 **Invoice 396** – This invoice dated 20/07/2007 is a labour only invoice for a grab driver for 5 shifts and for 5 labourers for 5 shifts also and relates to the provision of their services to Kelly Group at a number of different locations.

25 The services provided as set out in this invoice are, we were told and the schedule prepared by the Appellant confirms, included in invoice nos; 62 and 63 rendered to the Kelly Group.

The **output tax invoices** are both dated 13/08/2007 although the tribunal noted that invoice no: 63 appears originally to have been dated 13/07/2007 but has been corrected in ink). The tribunal does not doubt however that the services said to have been supplied by the Appellant would have been required in executing the work detailed in the output invoices. The use of a grab, for example is specifically mentioned.

35 **Granemore invoices**

Invoice 36 – This invoice dated 04/07/2007 relates, Mr Heavey explained, to a trial dig in Leeds as part of an attempt to secure work at the site from the principal contractor. Trial bores are taken to investigate the ground conditions and suitability for construction. The “Paul” referred to in the invoice was Paul McGowan who, with his brother, Nick, is said to be skilled in this area of work. Mr Heavey was told that he could have the contract for “dropping fibres” if needed but did not secure any follow up work in the event. Mr Heavey stated that when trial digs were undertaken he secured the main job 99% of the time. On this occasion he was unlucky. That is why there is no corresponding output tax invoice for this. The input tax on this job was £112 only.

45 **Invoice 43** – This invoice dated 12/07/2007 also relates to the cost of trial holes dug at Highbury in London. The work was undertaken for J B Riney and related to the proving of a route for a fibre optic cable. The VAT element was £183.75.

50 According to the Appellant’s schedule this work may have been included in an **output tax invoice** no: 72 dated 12/10/2007 rendered to J B Riney for ££2,261.87 including VAT.

19. Mr Heavey was asked by Mr Gibbon whether he could have done the above work without employing subcontractors. He replied “No, impossible”.

20. Mr Heavey confirmed that all of the supplies were supplied to him as shown in the invoices.

5 21. Cross examined by Mr Chapman, Mr Heavey confirmed that 99% of the work he undertook was subcontracted out. He did a little himself – generally checking cable depths. He had no employees (apart from his wife) and he had a broad range of subcontractors throughout the country, some of whom approached him seeking work. The work was specialised. Grab drivers were particularly in demand.

10 22. Concerning his contact with the above named subcontractors Mr Heavey said that he was unable to recall whether O’Neill Construction called him or whether they had contact on a job. It was frequently the case that when the Appellant purchased a quantity of piping word would get round that it was likely to need labour and people would contact Mr Heavey.

15 23. Mr Heavey had no specific recollection concerning his first contact with C & C. He had heard of James Radford by word of mouth. He had bumped into Granemore whilst working for Murphys.

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The tribunal’s consideration of the appeal

24. The invoices detailed above were rejected as inadequate in terms of the requirements of Regulation 14(1)(g) which requires *a description sufficient to identify the goods or services supplied* and Regulation 14(1)(h) which requires *that an invoice should state for each description, the quantity of the goods or services supplied*.

25 25. It was Mr Gibbon’s primary submission that these requirements were met by the invoices in dispute. Arguably he conceded, invoice no: 1358 from C &C was not compliant as the rate was mistakenly shown as £5.80 per day when clearly this was a typographical error as the total sum charged was correctly shown.

30 26. There is, Mr Gibbon contends, no requirement under either of these particular regulations to show where the work was done or to provide any further more detailed information.

35 27. The Respondents have sought to put in doubt the fact that the goods and services referred to in the invoices were in fact supplied to the Appellant. That is not perhaps surprising in light of the criminal activities of the parties from which the Appellant secured the supplies. A certain degree of circumspection with respect to invoices emanating from those sources seems to the tribunal to be a perfectly rational response on the part of HMRC.

40 28. Mr Chapman has submitted that in this case although there is no requirement *per se* to provide geographical details in all invoices the identification of the site at which the work was carried out is “crucial to a proper description of the work”. Why this is so is not fully explained although it appears to be of particular importance given the known criminal activities of the subcontractors concerned. Likewise the dates the work was carried out is said to be of similar importance in identifying the work.

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29. Regulation 29(2) provides:

5 “(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of:

(a) A supply from another taxable person, hold the document which is required to be provided under regulation 13.....

10provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold or provide such other evidence of the charge to VAT as the Commissioners may direct”

30. We are satisfied that, on behalf of the Appellant, Mr Heavey has, with the
15 assistance of his advisers, done his very best to supplement whatever shortcomings the Respondents have identified in the invoices for which input credit is sought. In each case he has provided details which include a fuller description of the goods and services supplied. He has in most cases been able to show how those goods and services formed part of subsequent invoices rendered to his customers and, in many
20 cases, the geographical sites of the work undertaken and, by reference to the invoice dates, the time window within which the works were carried out.

31. The Respondents have contended that this remains inadequate as the invoices rendered by the Appellant do not afford evidence about the supplies to the Appellant.

25 32. The Respondents do not explain how, what is a one-man business, could possibly undertake the work detailed in the invoices rendered by the Appellant without the input of the goods and services of the subcontractors said by Mr Heavey to have been used for the purpose. It is not anywhere suggested that the output
30 invoices are themselves fabrications.

33. In adopting the stance they have the Respondents are effectively accusing Mr Heavey of engaging in the fraudulent activities of O’Neill *et al*. If that was their intention then that matter should have been properly pleaded with the particularity
35 required of such a serious allegation of fraud. They have not done this but neither have they provided any explanation why Mr Heavey could have contracted with his customers without the subcontractors’ work and materials.

34. An assessment has been raised against the Appellant so that it becomes
40 incumbent on the Appellant to adduce evidence sufficient to displace the same. What the Appellant says is that the invoices concerned are, as a matter of law textually compliant with the regulations (subject only to the typographical error referred to above which the tribunal does not regard as significant.) If it is the Respondents’ case that, compliant or not, they fail adequately to explain what work was done and where,
45 then the additional information supplied reasonably satisfies any such further requirement.

35. The tribunal assessed Mr Heavey as a careful witness who gave truthful answers to the questions put to him both by his own solicitor and by counsel for the
50 Respondents. He did not prevaricate or provide inconsistent replies. When he could not recall something he said so. The tribunal is not inclined to view Mr Heavey as one who would invent transactions which did not take place or pretend he had received

5 supplies which did not exist. In our view Mr Heavey has been unfortunate in having dealt with four particular suppliers who, in relation to other contracts entirely, have been shown to have been dishonest. To impute such dishonesty to Mr Heavey without any evidence to support the suggestion and in light of evidence which clearly supports Mr Heavey's account is perverse.

10 36. The tribunal finds that the invoices concerned are compliant with the regulations. If however it is wrong about that then we find that the additional materials and explanations provided by the Appellant in respect of the subcontracted services are such as to require the Respondents to exercise their discretion in favour of allowing the input tax claimed. We say this because the Respondents in:

15 (a) failing to take account of the materials and explanations afforded them by the Appellant; and

(b) failing properly to take into account the fact that a one-man business such as that of the Appellant could not possibly execute the works invoiced to its customers without the goods and materials supplied by subcontractors; and

20 (c) imputing to the Appellant criminal intent in submitting a claim for VAT input tax for goods and services which the Respondents implicitly allege were not supplied or provided and taking this circumstance into account in making its decision to refuse the claim

25 ...acted unfairly and in a way which was in public law terms flawed.

30 37. In our view it was unreasonable to continue to refuse the Appellant's claim after it had supplied the information set out in the schedule referred to above and the explanations which accompanied this.

35 38. For the above reasons we allow this appeal. As the invoices selected by the Respondents for particular scrutiny were said to be typical of all of the invoices for which input credit has been denied and as the Appellant's schedule referred to above addresses all such invoices, the tribunal directs that all such invoices should be allowed for input tax purposes.

39. Accordingly this appeal is allowed and the assessment should be discharged.

40 40. This document contains full findings of fact and reasons for the decision set out above. Any party dissatisfied with the 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.

50 **JUDGE CHRISTOPHER HACKING**
TRIBUNAL JUDGE
RELEASE DATE: 13 May 2015