



TC04694

Appeal number: TC/2014/06729

VAT – Input tax disallowed – Invalid invoices – Whether exercise decision of HMRC to disallow input tax claim reasonable – Yes – Appeal dismissed – Regulation 29 Value Added Tax Regulations 1995

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AMBROSIA BAKES LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
JOHN ROBINSON**

Sitting in public at the Royal Courts of Justice, London on 23 October 2015

Giuseppe Masella, of Bond Street Capital London Limited, for the Appellant

Lisa Fletcher, of HM Revenue and Customs, for the Respondents

DECISION

1. Ambrosia Bakes Limited (“Ambrosia”) which operates a bakery from premises in Uxbridge Road, London, appeals against a decision of HM Revenue and Customs (“HMRC”) disallowing a claim for input tax in the sum of £10,062.90 made in its VAT accounting period ended 30 June 2014 (06/14) on the basis that the invoices on which the input VAT was claimed were invalid. Although it is now accepted that the invoices were invalid Ambrosia contends that, as it is not disputed that there was a supply, the input tax claim should nevertheless be allowed.

2. Under s 25 of the Value Added Tax Act 1993 (“VATA”) a taxable person is entitled to credit, at the end of each VAT accounting period, for so much of his input tax as is allowable under s 26 VATA and deduct this from his output tax. The amount of input tax he is entitled to credit is, in accordance with s 26 VATA, so much of the input tax for the period “as is allowable by or under regulations” as being attributable to taxable supplies made in the course of furtherance of his business.

3. The regulations referred to in s 26 VATA are the Value Added Tax Regulations 1995 Regulation 13 requires a taxable person to provide a VAT invoice to those to whom he makes a supply and Regulation 14 sets out the particulars that must be included on such a VAT invoice.

4. However, Regulation 29(2) of the Value Added Tax Regulations 1995 gives HMRC a discretion to accept other evidence, as an alternative to a VAT invoice, to allow a claim for input tax. It is well-established that that in an appeal against the exercise of HMRC’s discretion under Regulation 29 this Tribunal has only a supervisory and not a full appellate jurisdiction (see, for example, the judgment of Schiemann J (as he then was) in *Kohanzad v Commissioners of Customs and Excise* [1994] STC 697 at 969).

5. As Neill LJ said in giving the judgment of the Court of Appeal in *John Dee Limited v Commissioners of Customs and Excise* [1995] STC 941 at 950:

“The task of the tribunal... is therefore very similar, if not identical, to the task of a court on judicial review of an administrative decision. But it is more satisfactory to avoid references to *Wednesbury* itself and instead to follow the guidance given by Lord Lane in the *Corbitt* case where he said ([1980] STC 231 at 239, [1981] AC 22 at 60) that the tribunal could only properly review the commissioners’ discretion—

‘... if it were shown the commissioners had acted in a way in which no reasonable panel of commissioners could have acted; if they had taken into account some irrelevant matter or had disregarded something to which they should have given weight.’”

He continued, at 952:

5 “In examining whether that statutory condition is satisfied the tribunal will, to adopt the language of Lord Lane, consider whether the commissioners had acted in a way in which no reasonable panel of commissioners could have acted or whether they had taken into account some irrelevant matter or had disregarded something to which they should have given weight. The tribunal may also have to consider whether the commissioners have erred on a point of law. I am quite satisfied, however, that the tribunal cannot exercise a fresh discretion on the lines indicated by Lord Diplock in *Hadmor*. The protection of the revenue is not a responsibility of the tribunal or of a court.”

10 6. It is therefore necessary to consider the factual background, which was not disputed, in order to determine whether the decision of HMRC to disallow Ambrosia’s input tax claim was reasonable.

Evidence and Facts

15 7. We heard oral evidence from Mrs Joanna Kwasniak of Ambrosia Bakes and from HMRC Officer Neil Fernandes, who made the decision to disallow the input tax with which this appeal is concerned. We were also provided with a bundle of documents which included correspondence between the parties. It is on the basis of this evidence that we make our findings of fact.

20 8. Mrs Kwasniak explained that Ambrosia had used the services of an accountant to run its payroll but that when he returned to his native Poland it was necessary to find an alternative payroll provider. A friend of Mrs Kwasniak recommended the services of a company, Rochendale Limited, to her and the Ambrosia’s dealings with the company commenced subsequent a meeting between Mrs Kwasniak and a Mr Jarred Morris from “Quadrant” who attended Ambrosia’s bakery with another man whose name she cannot now recall.

25 9. After seeking confirmation from Companies House that the companies existed and checking the validity of their VAT registrations on HMRC’s and the “Europa” websites, Ambrosia entered into a “Human Resources Management Agreement” with “Rochendale Services Limited” (“Rochendale”). Under the terms of this agreement Rochendale was to procure an employer for Ambrosia’s staff (which were to be transferred to the new employer), a payroll bureau and human resources provider. Ambrosia was to pay the new employer on receipt of an invoice the wages of its, now former employees plus a 1½% administration fee and VAT. Ambrosia also entered into what was described as a “Deed” with FCH Personnel Limited (“FCH”) to assign the contracts of employment of its staff to FCH.

30 10. Neither of these documents were signed or dated but Mrs Kwasniak explained that this was because they had been signed “on a computer” after Ambrosia had sought advice from a local solicitor. She told us that Ambrosia had not experienced any problems or difficulties with Rochendale or FCH and its staff had always been paid on time and provided with payslips (although these did not show any employers’ PAYE scheme reference).

35 40 45 11. In accordance with the instructions on the invoices sent to it by Rochendale Ambrosia paid FCH for the services provided using the bank details as shown on the invoices.

12. In April 2014 Ambrosia registered for VAT with effect from 1 December 2013 (and, by virtue of its registration, became a taxable person as defined by s 3 VATA). In August 2014 it submitted its first VAT return, for the period 06/14, which included a repayment claim of £16,057.91, £10,062 of which was in relation to VAT shown on the Rochendale invoices.

13. On 27 August 2014 Officer Fernandes of HMRC contacted Mrs Kwasniak to explain that it was necessary to verify the claim before any payment could be made. Information including details of the Rochendale invoices were provided by email to Officer Fernandes by Mrs Kwasniak. On 12 September 2014, Officer Fernandes visited the bakery and obtained hard copies of the Rochendale invoices together with a copy of an undated and unsigned "Human Resources Management Agreement" and "Deed".

14. Having undertaken checks on Rochendale and FCH Officer Fernandes established that Rochendale were not registered for VAT and the VAT Registration number used by FCH was not its VAT number but one that of an altogether different trader. On 17 September 2014 he sent an email to Mrs Kwasniak stating:

Your labour provider is non-compliant for HMRC purposes. For any amount shown as VAT that you have already claimed on your returns, we will not be able to make any repayments unless, following the completion of our checks we are satisfied that you took reasonable steps to ensure the credibility of this supplier before you transferred your staff to them. If your supplier has any questions about this, please ask them to contact me.

15. Despite an exchange of emails between Officer Fernandes and Mrs Kwasniak, including the provision by Mrs Kwasniak of a signed "Human Resources Management Agreement" between Ambrosia and FCH (written in identical terms to the similarly described agreement with Rochendale) and a signed copy of the Deed between Ambrosia and FCH both of which were dated 5 October 2014, Officer Fernandes was not satisfied that Ambrosia had taken reasonable steps to ensure the credibility of the supplier given that the identity of the supplier was not obviously apparent from the invoices and Rochendale it was registered for VAT.

16. Officer Fernandes therefore wrote to Ambrosia on 3 October 2014 with formal notification that the input tax claim relating to the Rochendale Services invoices had been disallowed.

17. On 30 October 2014 Ambrosia appealed to the Tribunal against that decision.

Discussion and Conclusion

18. As we have already noted (see above) our jurisdiction in an appeal such as this is limited. The issue for us to determine is not whether Ambrosia is entitled to its input tax in the absence of valid invoices (and it is not sufficient that we might ourselves have reached a different conclusion) but whether the decision taken by HMRC to disallow that input tax is one that could reasonably have been reached.

19. Mrs Fletcher, for HMRC, argues that the decision was reasonable. She says Officer Fernandes did take into account all relevant matters including the fact that

services were supplied to Ambrosia and that he made his decision because it failed to provide sufficient alternative evidence for HMRC to allow its claim for input tax.

20. For Ambrosia, Mr Masella emphasised the small size of its business and the impact of the disallowance of input tax on its operation and whether this could be properly understood by HMRC. He also referred to the checks undertaken by Mrs Kwasniak and contends that, having regard to all the circumstances, it would have been reasonable for HMRC to have allowed Ambrosia its input tax claim.

21. While we do understand and appreciate the real difficulties faced by businesses like Ambrosia it is apparent from the evidence before us, that in reaching the decision to disallow Ambrosia its claim for input tax Officer Fernandes did not take account of some irrelevant matter or disregard something to which he should have given weight.

22. It therefore follows that the decision of HMRC to disallow Ambrosia's input tax claim was reasonable and we dismiss the appeal accordingly

Right to apply for Permission to Appeal

23. 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.

JOHN BROOKS

TRIBUNAL JUDGE

RELEASE DATE: 27 OCTOBER 2015