[2016] UKFTT 0611 (TC)

TC05347

Appeal number: TC/2015/05076

VAT – credit for input tax – invoices in the name of another person discharged by the Appellant – services supplied before registration – invoices for clothing – whether or not recoverable as input tax – appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

VAHID ALINEJAD **Appellant**

- and -

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

TRIBUNAL: JUDGE TONY BEARE
MR DEREK SPELLER FCA

Sitting in public at Fox Court, 30 Brook Street, London, EC1N 7RS on 16 August 2016

The Appellant did not appear and was not represented

Mrs J. Ashworth, Officer of HM Revenue & Customs, for the Respondents

© CROWN COPYRIGHT 2016

DECISION

1. This is an appeal made by the Appellant against the Respondents' refusal of a credit for input tax for the period ending 05/09 and an assessment under Section 73 Value Added Tax Act 1994 ("VATA") in the amount of £4,049.00. The assessment was originally issued on 10 November 2010 in the amount of £13,557.00 but, following further exchanges between the parties, it was issued in its current revised form on 7 December 2015.

2. The Appellant was not represented at the hearing. We noted that the notice of the hearing had been sent to the Appellant at the postal address stated in his notice of appeal, which had not formally been changed, although recent correspondence from the Appellant indicated that he was now residing at an address in Woking. Nevertheless, the notice of appeal also contained an e-mail address to and from which recent correspondence between the Appellant and the Tribunal had taken place and we noted that, by way of an e-mail from the Tribunal to the Appellant timed at 12:52 on 13 June 2016, the notice of hearing had been sent to that e-mail address. We were therefore satisfied that the Appellant had been notified of the hearing and that it was in the interests of justice to proceed with the hearing.

3. The appeal related to various amounts in respect of VAT incurred by the Appellant when trading as the sole proprietor of a business called Pizza Paradise.

4. The Appellant made his appeal on 21 August 2015. Although the appeal was out of time, this was as a result of mistakes made by the Respondents. The review requested by the Appellant's agent on 11 November 2010 was never carried out despite repeated reminders from the Appellant's agent. For that reason, the Respondents quite rightly did not oppose the Appellant's application to appeal out of time and we were content for the appeal to proceed.

The relevant law

5. As there is no dispute between the parties as to the relevant law in this case, we propose to set out only a brief summary of the applicable provisions. These are as follows:-

(a) Section 26 VATA provides that a taxable person is entitled to credit for so much of the input tax which he incurs on supplies made to him as is attributable to, inter alia, taxable supplies made by him in the course or furtherance of his business;

(b) sub-paragraph 111(2)(c) of the Value Added Tax Regulations 1995 (the "Regulations") provides that an amount in respect of VAT on a supply of services made to a taxable person more than six months before the date with effect from which he was, or was required to be, registered cannot be recovered; and

(c) sub-paragraph 29(2) of the Regulations provides that, in order to claim a deduction in respect of input tax, a person must either hold a

valid VAT invoice or such alternative evidence as the Respondents may direct.

The issues

6. For the purposes of this decision, we find it convenient to separate the expenses which are the subject of this appeal into four categories as follows:

(a) expenditure incurred in respect of rent and service charges pursuant to invoices from City Centre Restaurants (UK) Limited ("City Centre") as landlord and rendered to "All In One Restaurants Limited". There are three invoices in this category, dated 14 March 2008, 27 June 2008 and 17 September 2008 respectively, and the aggregate amount in respect of VAT at issue in this category is £7,488.75;

(b) expenditure incurred under a further invoice from City Centre to All In One Restaurants Limited but dated 21 June 2007. The amount in respect of VAT at issue in this category is £194.29;

(c) expenditure incurred on twelve invoices rendered to "Deep Pan Pizza". The aggregate amount in respect of VAT at issue in this category is £68.61; and

(d) expenditure incurred pursuant to invoices from Matalan. The aggregate amount in respect of VAT at issue in this category is £19.69.

The facts

7. Unfortunately, not all of the facts necessary for resolving this appeal were as clear as they could have been because the correspondence which passed between the parties prior to the hearing showed that there was a misunderstanding between them as to what was necessary for the Appellant to be entitled to recover the amounts referred to above an input tax. The Appellant was under the impression that it was merely necessary for him to prove to the Respondents that he had incurred the expenditure in question (an impression which, unfortunately, the Respondents did not dispel as clearly as they might have done) whereas the Respondents' position (as articulated at the hearing) was that the Appellant had failed to show that the relevant supplies had been made to him in the course or furtherance of his business and therefore he could not recover the amounts as input tax even if he had incurred them.

8. As the Appellant did not attend the hearing, we were reliant on such facts as we were able to deduce from the papers and the invaluable help of Mrs Ashworth who, although appearing on behalf of the Respondents, was thoroughly objective and fair in her approach.

9. The facts which are clear in this case are as follows:-

(a) The Appellant was registered for VAT with effect from 1 April 2008 until 28 June 2009;

(b) The Appellant was previously a director of All In One Restaurants Limited. That company failed to file any accounts during the period of its existence and was struck off the Companies House register on 2 August 2008;

(c) All In One Restaurants Limited traded at premises in Swansea which were leased to it by City Centre. The address of those premises is variously described in the invoices provided by City Centre as Parc Tawe Retail Park, North Dock, Swansea, SA1 2AL or Oasis Retail Park, Swansea, SA1 2AL;

(d) In his application for registering for VAT, the Appellant gave 9 Oasis Retail Park, Swansea, SA1 2AL as the principal place where the running of the business of Pizza Paradise was being carried out;

(e) That application, which was made on 17 March 2009, also stated, in response to question 14, that the Appellant's turnover had exceeded the VAT registration threshold in February 2008 and, in response to question 9, that the Appellant had not taken over a business as a going concern; and

(f) Some of the bank statements produced by the Appellant to evidence his payment of the expenses were addressed to the Appellant trading as Pizza Paradise at 9 The Piazza Parc Tawe, Swansea, West Glamorgan, SA1 2AL.

10. We believe that, given the common postcode, each of the premises referred to in sub-paragraphs 9(c), 9(d) and 9(f) above is the same. And, putting all of the above information together, we believe that All In One Restaurants Limited (of which the Appellant was a director) carried on its business unsuccessfully at those premises and that, at some point in 2007 or 2008, the Appellant (trading as Pizza Paradise) started to carry on business from the same premises in addition to, or instead of, All In One Restaurants Limited.

11. Further support for this conclusion can be found in the letter from the Appellant to the Respondents of 30 April 2016 in which he describes the invoices from City Centre as "covering the rent and service charge paid to the landlord City Centre for the business premises during the same period when I was the occupier".

Conclusions

Category (a) – rent and services charges

12. In relation to the first category of expenditure referred to in paragraph 6 above, the Respondents have accepted that the mere fact that the relevant invoices were not made out in the name of the Appellant is not determinative of the Appellant's ability to recover as input tax the amounts in respect of VAT which are shown on the relevant invoices. Instead, pursuant to the discretion which is accorded to them by sub-paragraph 29(2) of the Regulations, the Respondents have said that they are prepared to countenance the recovery of the relevant amounts by the Appellant as long as the Appellant has shown that he incurred the amounts shown on the invoices

and that the amounts were incurred by him in the course or furtherance of his business. The Respondents accept that the Appellant has met the first of these requirements. It is the Appellant's satisfaction of the second of these requirements which is the basis for their challenge. Given the facts described above, we believe that the relevant expenditure was incurred by the Appellant for the purposes of the business which he was carrying on at the premises in the name of Pizza Paradise and therefore that the amounts in respect of VAT included in those invoices should be recovered by the Appellant as input tax.

Category (b) – the invoice of 21 June 2007

13. As regards the second category of expenditure – the invoice from City Centre dated 21 June 2007 – this precedes the date on which the Appellant was registered for VAT by more than six months. Accordingly, pursuant to sub-paragraph 111(2)(a) of the Regulations, the Appellant is precluded from recovering as input tax the amount in respect of VAT which is included in this invoice.

Category (c) – the invoices rendered to "Deep Pan Pizza"

14. No evidence was advanced to us to support the proposition that the invoices rendered to "Deep Pan Pizza" were incurred by the Appellant for the purposes of his business. On the other hand, this is not a question which the Respondents put to the Appellant in the correspondence leading to the hearing. As mentioned above, the Appellant was left with the impression that he merely needed to show that he had discharged the invoices in order to recover as input tax the relevant amounts in respect of VAT. Given that:

(a) whilst they accept that the Appellant discharged the invoices, the Respondents are now alleging that the Appellant has not produced evidence to support the proposition that the relevant expenses were incurred for the purposes of his business; and

(b) the Appellant was not at the hearing to clarify the position,

this leaves us in a difficult position. Although the Appellant has not produced positive evidence to support the proposition that the expenses were incurred by him for the purposes of his business, the references to pizza in the name of the entity to which the invoices were apparently rendered do suggest that this may well have been the case. Moreover, the impression which we have formed of the Appellant from reading the papers is that he is honest and has genuinely tried to comply with his taxation obligations. We are therefore inclined to uphold the Appellant's appeal in respect of these invoices.

Category (d) – Matalan invoices

15. Similarly, in paragraph 7 of the letter of 24 May 2010 from Peter Lynn & Partners on the Appellant's behalf to the Respondent, the Appellant states that the invoices from Matalan were for "ladies black uniforms for the business". We have no reason to disbelieve the Appellant in this regard. Accordingly, we uphold his appeal in respect of the expenditure on the invoices from Matalan.

Summary

16. It follows from the above that we allow the Appellant's appeal against the disallowance of input tax credits made by the Respondents with the exception of the £194.29 that relates to the invoice of 21 June 2007 from City Centre. The assessment should be reduced to nil and the Respondents should make a repayment to the Appellant to reflect the above decision.

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 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 2 SEPTEMBER 2016