[2016] UKFTT 0632 (TC)

TC05368

Appeal number: TC/2016/00928

Self-build – VAT reclaim – When is new build finished – not necessarily when completion certificate is issued.

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR RICHARD HALL **Appellant**

- and -

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

TRIBUNAL: JUDGE GERAINT JONES Q. C.
MR JOHN ROBINSON

Sitting in public at Southampton on 19 August 2016

The Appellant in person.

Miss Ashworth, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

1. During 2014 and the first part of 2015 the appellant, Mr Hall, built himself a new house in Wareham. There is common ground between the parties to this appeal that it was a new self-build that entitled the appellant to claim a refund of the value added tax that he had paid on building materials used in and about the construction of that new dwelling. Indeed, the appellant has been refunded the bulk of the VAT that he reclaimed but the respondents declined to repay a sum of £1368.20p in respect of an invoice issued by S & S Joinery Ltd.

2. Before turning to the specific invoiced amounts and the VAT thereon that are in dispute in this appeal, we turn to a letter dated 03 November 2015 from the respondents to the appellant in which the respondents stated that a refund of VAT in respect of eligible building materials could not be made if those materials were purchased after the building "is deemed complete". The respondents went on to say that the building was deemed complete when a Completion Certificate from Building Control was issued. Miss Ashworth did not seek to rely upon or support that contention. In our judgement she was correct not to do so because it is plainly wrong.

3. A Certificate of Completion can be issued in respect of a dwelling house when the dwelling house satisfies the various criteria set out in the Building Regulations. That does not necessarily mean that the building works, for which planning permission has been granted in respect of a new dwelling, will have been completed. A Completion Certificate can be granted where the dwelling itself satisfies each of the applicable Building Regulations so as to qualify as being habitable, notwithstanding that, for example, the driveway, surrounding paths and/or boundary fences/walls have not been completed. Some may choose to reside in a new house whilst those outstanding works are done. The fact that they have not been done will not prevent a Completion Certificate being issued. Such a Certificate does not certify that the entire building works have been completed; only that the dwelling has been constructed so as to be habitable in accordance with the requirements of the Building Regulations.

4. It will always be a matter of fact and degree as to whether and when any particular building project has been finished and come to its actual completion. It will not necessarily be the date upon the Completion Certificate.

5. As part of his VAT reclaim the appellant submitted two invoices from S & S Joinery Limited. The first is a deposit invoice dated 30 January 2015 and the second is the full payment invoice dated 13 April 2015. That single invoice describes various items supplied and/or fitted by that company, but that does not, of itself, dictate that the various separate items mentioned therein form part and parcel of a single supply. That is a matter of mixed fact and law.

6. Before turning to the relevant law it is necessary to understand the factual background and it is essential that we should make our findings of fact in respect thereof. The only witness in this appeal was the appellant, Mr Hall, who produced a photograph of the rear external elevation of his new house. He did so to assist in our

understanding of the internal layout within the two rear facing bedrooms and to explain that instead of having flat ceilings they had sloping or vaulted ceilings running up to eaves level. It was his evidence that this was both an architectural feature and a practical measure to provide storage. A new page 52 was provided to us for our bundles as the photographs of the original page 52 were barely legible. By reference to the photographs on that page the top left-hand photograph is said to depict an external wall to the right of the photograph with units which look like cupboards or wardrobes butting up to an end panel to the left of the photograph. The appellant stated that the end panel was either wood or plasterboard (he could not be certain which).

7. The top right photograph was said to be a high level view of a cupboard above the door frame of the bedroom door with the cupboard being within the apex of the roof construction. To its right can be seen an area of what is commonly called boxing, to conceal pipes or electrical wiring. Mr Hall gave evidence that if that door had been open, we would have been able to see a flat timber floor or platform with a water tank standing upon it. The bottom right photograph was said to be a view of the inside of that construction which appeared to show a chipboard side panel, although Mr Hall explained that it was not in fact chipboard but a material that looked very similar to it. The bottom left photograph is a closer view of the door. That gives way, at high level, to the platform on which the water tank stands.

8. No photographs of similar units in a second bedroom were produced. Mr Hall's evidence was that all the lower cupboards were finished with plaster board and skim, which had been painted. He said that they are not lined with any carcassing, whether timber or laminate. The bottom right photograph corroborates that evidence.

9. When asked questions by Miss Ashworth the appellant said, by reference to the invoice at page 78 in the bundle (being the invoice dated 13 April 2015), that the invoice referred to two floor-to-ceiling units and one unit running from the head of the door to the ceiling. During cross-examination the appellant also told us that the units were substantially made by the suppliers in their workshop before being delivered to site where any necessary final assembly took place prior to the units being fitted.

10. We considered the appellant to be a witness of the truth and accept his factual evidence.

11. Section 35 Value Added Tax Act 1984 provides that where a person carries out self-build work on a new dwelling (even if it completely replaces a pre-existing dwelling) and VAT is chargeable on the supply of any goods used for the purposes of the works, then if an appropriate claim is made, the amount of VAT so chargeable will be refunded. Miss Ashworth contended that that provision has the effect that no VAT is repayable in respect of a "supply and fit" contract where the supply and fit should have been zero rated because the statutory provision provides that the refund is "the amount of VAT so chargeable", and the amount of VAT chargeable on a supply and fit in respect of new build is zero (because the appropriate VAT rate is 0%). That is a correct proposition of law.

12. There are then convoluted provisions at Note 22 in Part II of Schedule 8 of the 1984 Act, which state that finished or prefabricated furniture, other than furniture designed to be fitted in kitchens, does not constitute "building materials" within the meaning of section 35 of the 1994 Act. However, that seemingly understandable provision then has to be construed in accordance with the exception to the exception. The exception to the exception is that where timber (or other appropriate materials) are used to close in spaces between, for example, a wall and a nib wall, the materials used to achieve that end do constitute building materials. Similarly, where such materials are used to create an airing cupboard or under stairs storage cupboards.

13. The essential distinction is whether the finished item is properly to be described as fitted furniture or as building materials that simply result in the enclosure of a given space. In reality it is a matter of fact and degree. Miss Ashworth agreed with that approach and as the hearing before us continued it became increasingly clear that the outcome of this appeal, at least on the issue of whether the enclosed spaces amounted to fitted furniture or building materials used to enclose a space, meant that fine distinctions had to be drawn and it was a matter of fact and degree as to which side of the narrow dividing line any such construction fell.

14. Before turning to that issue we should indicate that this appeal must fail in any event, because on the appellant's case S & S Joinery Ltd not only supplied the relevant materials, but also fitted them. Their invoice shows a charge of £800 (plus VAT) for fitting. Insofar as the appellant's arguments are upheld and the joinery company supplied items that are not to be classified as fitted furniture, the supply and fit of those items should have been zero rated. For the reasons that we have set out above that does not allow the appellant to recover any VAT paid thereon from the respondents, because only the VAT that was properly chargeable can be reclaimed. The properly chargeable VAT, in respect of some items was, as we explain below, 0%.

15. Although we have not had the most detailed evidence and although we have explained why this appeal must fail, we consider it proper to outline what findings we would have made had these items not been supplied further to a supply and fit contract.

16. In our judgement the construction in the principal bedroom which runs floor to ceiling and from door head level to ceiling level which performs the function of supporting and concealing one or more water tanks, is not properly to be characterised as fitted furniture. The enclosed space is nothing more than a basic storage facility and, in our judgement, is akin to an incidental storage space and cannot be regarded as an item of fitted bedroom furniture.

17. In respect of the second bedroom we have insufficient evidence to come to a similar finding. The distinction may be a narrow one but the appellant described the units in that bedroom as being used for general storage and as we understood the evidence there is no function akin to being a small plant room at door head level.

18. Thus we would have concluded that the VAT should not have been charged by the joinery company in respect of the sums of £1280, £1340 and £1550 which refer to units in the main bedroom. We would have concluded otherwise in respect of the unit in the "boys' bedroom". The installation charge has not been apportioned but it ought to have been subject to a fair and reasonable apportionment between the two rooms with VAT being levied at 0% on the portion attributable to the main bedroom.

19. There is no reason why the appellant should not return to the joinery company to rectify the situation as we are satisfied that although the various items are contained within one invoice, the fact that they specifically refer to items being supplied to separate bedrooms does not constitute these a single supply and, in any event, it would be open to the joinery company to issue corrective invoices.

20. For the reasons set out above this appeal fails and it will be for Mr Hall to decide what, if any, approach he makes to the joinery company.

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.

JUDGE JONES
TRIBUNAL JUDGE

RELEASE DATE: 9 SEPTEMBER 2016