[2017] UKFTT 0528 (TC)

TC05977

Appeal number: TC/2014/4178

VAT – input tax – absence of proper VAT invoices – alternative evidence of supply – ss 24 & 47 VATA 1994 – reg 29 VAT Regs 1995

FIRST-TIER TRIBUNAL
TAX CHAMBER

IQRA ASSOCIATES UK LIMITED **Appellant**

-and-

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

TRIBUNAL: **Judge Peter Kempster**
Mr Terence Bayliss

Sitting in public at Centre City Tower, Birmingham on 19 June 2017

The Appellant did not appear and was not represented

Mr Vinesh Mandalia of counsel, instructed by the General Counsel and Solicitor to HM Revenue & Customs, for the Respondents

DECISION

1. The Appellant ("Iqra") appeals against decisions made by the Respondents ("HMRC") to amend Iqra's VAT returns for the quarterly periods 10/10 and 07/11. The effect of the amendments is to deny deduction of the majority of the input tax claimed in both periods. The decisions were upheld on formal internal review by HMRC. The amounts of the adjustments were subsequently reduced, and the amended amounts still in dispute are detailed later.

2. Prior to the hearing Iqra's director Mr Adnan Lalan emailed the Tribunal to explain that Iqra would not be appearing at the hearing, and making some submissions which are detailed later.

3. The approach we have adopted, which we believe is uncontroversial, is (i) HMRC must explain the amendments they made, including the reasons for their decisions (including exercising or not exercising any discretion afforded to HMRC) and relevant calculations; and (ii) the burden then passes to Iqra who must prove, on the balance of probabilities and using pertinent evidence, that the disputed amendments are incorrect. We would note that it is unfortunate that Iqra did not appear at the hearing; we appreciate that it felt it could not afford legal representation but it could still have produced Mr Lalan as a witness who could have assisted the Tribunal by (i) speaking to his witness statement dated 11 October 2016; (ii) explaining certain documents in the trial bundle; and (iii) answering questions put by HMRC and the Tribunal.

4. At the hearing we heard oral evidence from HMRC witnesses:

(1) Mr David Hancox, who adopted and confirmed two witness statements dated 28 November 2016 and 29 March 2017, and answered questions from the Tribunal. Mr Hancox had taken over this matter from a colleague within the previous twelve months but had examined all HMRC's files on the matter.

(2) Mr Tom Simmons who adopted and confirmed a witness statement dated 30 November 2016, and answered questions from the Tribunal. Mr Simmons was the review officer.

(3) A third HMRC witness, Mr Paul Fisher, was present and available, but having considered his witness statement dated 30 November 2016 the Tribunal had no questions for him.

5. Iqra served witness statements by eight witnesses, including Mr Lalan. We read those statements, and Mr Mandalia for HMRC commented on some aspects thereof, but as the witnesses were not present to answer questions on their evidence, the weight to be attached to the content of those statements is necessarily less.

6. We also had a trial bundle of documents running to fifteen ring binders; these included copies of all the disputed invoices/receipts underlying the amendments under appeal.

Background

7. Iqra was incorporated in 2008 and registered for VAT in 2009. Its business involves the purchase and sale of mobile phones. When registering for VAT Iqra stated that it did not expect regularly to have input tax exceeding output tax; in fact, every VAT return filed by Iqra was a repayment return.

8. HMRC selected Iqra's return for the 10/10 period for verification. The return claimed a repayment of around £75,000. In November 201 HMRC visited the trade premises and met with Mr Lalan. Over the following months documentation was requested and provided.

9. HMRC also investigated Iqra's VAT return for the period 07/11.

10. HMRC withdrew Iqra's VAT registration with effect from 18 September 2012.

11. On 31 October 2012 HMRC formally amended the 10/10 return to deny input tax deductions of around £75,000. On 25 July 2013 HMRC formally amended the 07/11 return to deny input tax deductions of around £2,000. Following further meetings and correspondence, the amendments were adjusted. Iqra's representatives requested a formal review of both decisions and the result was given by HMRC on 11 July 2014; both amendments were upheld in the adjusted amounts. In May 2016 there were some further adjustments made by HMRC.

12. Iqra appealed both (adjusted) amendments to this Tribunal.

Law

13. Section 24 VAT Act 1994 provides (so far as relevant):

> "… (6) Regulations may provide—
>
> (a) for VAT on the supply of goods or services to a taxable person … to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases;
>
> …
>
> (6A) Regulations under subsection (6) may contain such supplementary, incidental, consequential and transitional provisions as appear to the Commissioners to be necessary or expedient."

14. Regulation 29 of the VAT Regulations 1995 (SI 1995/2518) provides (so far as relevant):

> "… (2) At the time of claiming deduction of input tax … 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;

…

provided 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."

15. Regulation 13 of the VAT Regulations provides (so far as relevant):

"(1) Save as otherwise provided in these Regulations, where a registered person—

(a) makes a taxable supply in the United Kingdom to a taxable person,

…

he shall provide such persons as are mentioned above with a VAT invoice …

…

(5) The documents specified in paragraphs (1), (2), (3) and (4) above shall be provided within 30 days of the time when the supply is treated as taking place under section 6 of the Act, or within such longer period as the Commissioners may allow in general or special directions."

16. Regulation 14 of the VAT Regulations stipulates the contents of a VAT invoice, including (reg 14(1)(e)): "the name and address of the person to whom the goods or services are supplied".

17. Section 47 VAT Act 1994 provides:

"(1) Where—

(a) goods are acquired from another member State by a person who is not a taxable person and a taxable person acts in relation to the acquisition, and then supplies the goods as agent for the person by whom they are so acquired; or

(b) goods are imported from a place outside the member States by a taxable person who supplies them as agent for a person who is not a taxable person,

then, if the taxable person acts in relation to the supply in his own name, the goods shall be treated for the purposes of this Act as acquired and supplied or, as the case may be, imported and supplied by the taxable person as principal.

(2) For the purposes of subsection (1) above a person who is not resident in the United Kingdom and whose place or principal place of business is outside the United Kingdom may be treated as not being a taxable person if as a result he will not be required to be registered under this Act.

(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who

acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent.

(3) Where services are supplied through an agent who acts in his own name the Commissioners may, if they think fit, treat the supply both as a supply to the agent and as a supply by the agent."

HMRC Statement of Practice

18. HMRC's policy on the exercise of their discretion under reg 29 in relation to "such other evidence of the charge to VAT as the Commissioners may direct" is stated in HMRC's Statement of Practice "VAT Strategy: Input Tax deduction without a valid VAT invoice", which includes the following:

> "2. These changes were made to address the increasing threat to VAT receipts by the use of invalid VAT invoices and are part of the Government's strategy to address fraud, avoidance and non-compliance in the VAT system. They are a proportionate and necessary response to a systematic and widespread attack on the VAT system, where the use of invalid VAT invoices is becoming an increasing pressure on revenue receipts, particularly in those business sectors involved in the supply of the goods listed at Appendix 3. In addition to the revenue loss, this has led to distortion of competition.
>
> 3. For the vast majority of business there will be no change, and for businesses trading within the targeted sectors the measure will only impact if you have an invalid invoice. If you are a VAT registered business, and you have been issued with an invoice that is invalid, you should be able to return to your supplier and ask them for a valid VAT invoice that complies with the legislation. If for some reason you cannot, this Statement of Practice sets out whether or not you may be entitled to input tax recovery. In most cases, provided businesses continue to undertake normal commercial checks to ensure their supplier and the supplies they receive are 'bona fide' prior to doing any trade, it is likely they will be able to satisfy HMRC that the input tax is deductible.
>
> …
>
> **What do I do if I have an invalid VAT invoice?**
>
> 11. The simplest thing is to ask your supplier to issue a valid VAT invoice (suppliers are legally obliged to do this). If a taxable supply has taken place but a revised invoice cannot be obtained HMRC may apply their discretion to allow recovery of input tax.
>
> …
>
> **Invalid Invoice and HMRC's Discretion.**
>
> A proper exercise of HMRC's discretion can only be undertaken when there is sufficient evidence to satisfy the Commissioners that a supply has taken place.

Where a supply has taken place, but the invoice to support this is invalid, the Commissioners may exercise their discretion and allow a claim for input tax credit.

For supplies/transactions involving goods stated in Appendix 3 HMRC will need to be satisfied that:

- The supply as stated on the invoice did take place
- There is other evidence to show that the supply/transaction occurred
- The supply made is in furtherance of the trader's business
- The trader has undertaken normal commercial checks to establish the bona fide of the supply and supplier
- Normal commercial arrangements are in place - this can include payment arrangements and how the relationship between the supplier/buyer was established

...

How will HMRC apply their discretion?

17. For supplies of goods not listed at Appendix 3, claimants will need to be able to answer most of the questions at Appendix 2 satisfactorily. In most cases, this will be little more than providing alternative evidence to show that the supply of goods or services has been made (this has always been HMRC's policy).

18. For supplies of goods listed at Appendix 3, claimants will be expected to be able to answer questions relating to the supply in question including all or nearly all of the questions at Appendix 2. In addition, they are likely to be asked further questions by HMRC in order to test whether they took reasonable care in respect of transactions to ensure that their supplier and the supply were 'bona fide'.

19. As long as the claimant can provide satisfactory answers to the questions at Appendix 2 and to any additional questions that may be asked, input tax deduction will be permitted.

20. Decisions on when to disallow VAT claims will only be made after an independent central review of the case has been carried out.

…

Appendix 2

Questions* to determine whether there is a right to deduct in the absence of a valid VAT invoice

1. Do you have alternative documentary evidence other than an invoice (e.g. supplier statement)?

2. Do you have evidence of receipt of a taxable supply on which VAT has been charged?

3. Do you have evidence of payment?

4. Do you have evidence of how the goods/services have been consumed within your business or their onward supply?

5. How did you know that the supplier existed?

6. How was your relationship with the supplier established? For example:

- How was contact made?
- Do you know where the supplier operates from (have you been there)?
- How do you contact them?
- How do you know they can supply the goods or services?
- If goods, how do you know the goods are not stolen?
- How do you return faulty supplies?

*This list is not exhaustive and additional questions may be asked in individual circumstances

Appendix 3

Supplies of goods subject to widespread fraud and abuse

…

b) Telephones and any other equipment, including parts and accessories, made or adapted for use in connection with telephones or telecommunications.

…"

HMRC's submissions on the Amendments

19. For HMRC Mr Mandalia submitted as follows.

20. HMRC did not allege that Iqra knew or should have known that any of the transactions on which the input tax has been denied were connected with fraud. Thus the principles established in *Kittel v Belgium* (Case C-439/04) [2006] All ER (D) 69 (Jul) were not applicable to the current appeal.

21. The amendments relate to several categories of disputed items where HMRC maintain that Iqra has no entitlement to deduct input tax. These may be classified as follows:

(1) Purchases from traders, including inter alia Argos and Tesco, relying upon purchase receipts that were not genuine. (Period 10/10 amount £25,555.24)

(2) Purchases of mobile phones that were neither purchased by or on behalf of Iqra, nor by employees or agents of Iqra. (Period 10/10 amount £13,945.82; period 07/10 amount £21.65)

(3) Purchases where Iqra was unable to provide any proof of the purchase at all. (Period 10/10 amount £611.82; period 07/10 amount £1,270.99)

(4) Duplicated invoices. (Period 10/10 amount £46.91; period 07/10 amount £21.65)

(5) Purchases of zero-rated supplies. (Period 10/10 amount £3,799.18)

(6) Purchases of goods to the value of £250 or more in respect of which there was no evidence to establish that the goods had been purchased by or on behalf of Iqra. (Period 10/10 amount £27,548.89)

(7) Goods returned and credit notes issued. (Period 10/10 amount £46.15)

(8) Purchases made upon credit cards that had no connection to Iqra or its employees. (Period 10/10 amount £2,462.09)

(9) Purchases that were not for Iqra or in furtherance of Iqra's business. (Period 10/10 amount £1,162.80)

Purchase receipts that were not genuine

22. Some of the till receipts used to justify purchases had been examined by an independent forensic document examiner with the conclusion that while the sample appeared to show transactions from multiple stores on different dates, some of the purchase receipts were in fact printed from the same continuous length of paper (eg tear patterns at each end, pre-printed text on rear, indented roller/feeder marks on edges), such that they could not have originated from the stores and on the dates shown, but instead had been produced in bulk lots and therefore were not genuine receipts.

23. Further to a hearing before Judge Poole on 28 January 2015, a sample of receipts was sent to the relevant suppliers (Tesco and Argos):

> "requiring the trader to confirm
>
> a. Whether or not the invoices (or an agreed representative sample thereof) relied upon by the Appellant are genuine;
>
> b. Whether the detail of the transaction set out in the invoices (or an agreed representative sample thereof) relied upon by the Appellant accords with the information held by the trader as to that transaction"

24. The response from Tesco in May 2015 was that none of the sample transactions were recorded in Tesco's own data warehouse; further, some receipts stated a checkout number that was not in use at the stated store, or stated an operator number for a checkout that was actually self-service or scan-as-you-shop.

25. The response from Argos in May 2015 stated:

(1) Many of the sample items were too faded to be examined properly; that in itself was suspicious because the ink used by Argos would not be expected to have faded over the relevant period of time, as shown by an example of a genuine item of similar age provided by Argos.

(2) The printing on the back of the receipts was not genuine – there was a full stop missing from the text.

(3) Some of the purported sales were of items that were on promotional price at Argos on the relevant dates, but the receipts recorded the catalogue price (rather than the promotion price).

26. Further to a hearing before Judge Poole on 10 December 2015, Judge Poole recorded:

> "I note that samples of the disputed receipts have been sent to Tesco and Argos, who have respectively confirmed that (in broad terms) none of the transactions reflected on the receipts sent to them can be related to an actual sale made by them.
>
> It is clear to me that there has been some misunderstanding and lack of clarity about the status of the remaining receipts purportedly issued by Tesco and Argos - the Appellant maintaining that HMRC have implicitly accepted their validity and HMRC maintaining that not to be the case.
>
> The whole purpose of sending a representative sample of the invoices to Tesco and Argos for verification was to establish the authenticity of the invoices as a whole without putting Tesco and Argos to the effort and expense of examining all the disputed invoices. Therefore I am satisfied that HMRC should not be taken to accept the authenticity of all the remaining invoices purportedly issued by Argos and Tesco which were not included in the sample but were instead sent back to the Appellant by HMRC.
>
> It seems to me to be appropriate that the Appellant should be permitted the opportunity to have a further (smaller) sample of receipts submitted to Argos and Tesco for verification on a similar basis as before, and that the Appellant should have the right to select the receipts to be included in that sample. '
>
> Following receipt of responses from Argos and Tesco, if none of the further sample are found to be, authentic, then the, Tribunal is likely to infer that none of the Argos and Tesco receipts (including, for the avoidance of doubt, those which have not been sent to Argos or Tesco for verification) are authentic in the absence of persuasive evidence to the contrary. Should the Appellant wish to approach Tesco or Argos to assist in providing such evidence in relation to the remainder of the receipts (i.e. confirmation of their authenticity) then it would be able to do so at its own cost; if necessary the Tribunal would consider the

> exercise of its powers of compulsion under its Procedure Rules, but only on the basis of the Appellant. paying the costs of such an exercise.
>
> If on the other hand some or all of the further sample are found to be authentic, then unless the parties can agree as to the authenticity (or otherwise) of the remaining receipts which have not been considered by Tesco and Argos, that will become a matter of fact to be assessed by the Tribunal at the ultimate hearing on the basis of the evidence made available at that time.
>
> Whatever the outcome of the further enquiries to Tesco and Argos, the Appellant should be required to clarify whether it still claims to be entitled to deduct the input tax supposedly reflected in any of the documents in question, so as to enable HMRC to frame their amended statement of case appropriately"

27. In February 2016 the further samples selected by Iqra were sent to Tesco and Argos. In March 2016 both retailers replied stating that, so far as could be ascertained, the receipts were genuine. However, HMRC had subsequently identified that the receipts selected by Iqra to comprise the further samples were all receipts whose authenticity was not challenged by HMRC – although the input tax recorded thereon may have been denied for other reasons. Therefore, the further samples, in HMRC's opinion, added nothing to the results of the first samples and the Tribunal was invited to draw its conclusions accordingly.

Purchases neither by or on behalf of Iqra, nor by employees or agents of Iqra

28. The explanation provided by Iqra for the items in this category was that the company used "runners" to purchase goods for the company to resell, and that all the items were bought on Iqra's behalf for that purpose.

29. For the 10/10 period alone, there were 167 separate individuals identified by HMRC; that would necessitate detailed record-keeping by Iqra which had not been shown to HMRC and which HMRC concluded was not in fact available. Six individuals had given witness statements in which they stated they were employees of Iqra; where HMRC had been able to confirm the employment status of named individuals then the relevant receipts had been accepted as valid input tax claims. However, the majority of the challenged items were unsupported by any evidence of employment status. In the absence of proper records, HMRC were unable to accept that Iqra had incurred input tax on these items.

30. Iqra maintained that most runners were appointed as self-employed "purchasing agents" and had provided example contracts signed by some runners. HMRC did not accept these as credible descriptions of the arrangements: the sales commissions were not stated; agents were apparently expected to open boxes to check stock but that would render the goods unsuitable for onward sale. There was a witness statement from one individual (Mr Patel) stating that he contracted through his company (Concept Associates Limited). Further, for such transactions the correct VAT

treatment was for the agent to reclaim the VAT on the purchase itself and then invoice Iqra for the transactions: s 49(2A) VATA 1994.

Unable to provide any proof of the purchase at all

31. These were transactions where the only documentation provided was items such as screen prints, purchase orders, credit card slips (with no attached goods receipt), and advice slips. No explanation had been provided as to why there was not available a consequent VAT invoice/receipt for each of these items. None of these items comprised sufficient evidence that Iqra had incurred the input tax claimed.

Duplicated invoices

32. For the 10/10 period this had been conceded by Iqra's representatives in correspondence. For the 07/11 period this related to a single item which was clearly a duplicate of another receipt (which had also been denied but on different grounds).

Purchases of zero-rated supplies

33. A large number of purchases related to mobile phones where the handset was packaged with a pre-paid pay-as-you-go credit. The correct VAT treatment was that the handset was standard rated while the PAYG charge was zero rated; that had been correctly reflected on the receipts where the supplier had charged VAT on the handset price but not on the PAYG price. However, Iqra had recorded these items as being fully VATable and treated the price paid for PAYG (as well as that for the handset) as VAT-inclusive; Iqra had then claimed as input tax the VAT fraction of the PAYG price. That was clearly incorrect, and the amendment for these items corrected the error.

Purchases of goods to the value of £250 or more in respect of which there was no evidence to establish that the goods had been purchased by or on behalf of Iqra

34. These almost exclusively related to purchases from Apple stores. The documents (till receipts) were not proper VAT invoices as they were not addressed to Iqra (indeed, they had no customer names).

35. HMRC had considered the discretion afforded to them to accept suitable alternative evidence of the purchases. Mr Simmons's evidence was that HMRC expected a trader to attempt to obtain a valid VAT invoice by approaching the supplier; that was in accordance with the practice described in paragraph 11 of the Statement of Practice. Iqra had not pursued this course of action – or at least had not provided any evidence of doing this. Further, no cogent alternative evidence had been provided for each of the disputed items, although HMRC had fairly considered the limited information made available. For those reasons, HMRC had concluded that it would not be appropriate to exercise their discretion and, accordingly, had denied the VAT related to these items.

Goods returned and credit notes issued

36. This had been conceded by Iqra's representatives in correspondence.

Purchases made upon credit cards that had no connection to Iqra or its employees

37. Iqra had not produced any evidence to support these items. The identity of the credit card holder was not apparent from the documents, only the final few digits of the credit card used for the purchase. Iqra had not identified the purchasers, nor produced evidence such as credit card statements in support. There was nothing to connect the documents to Iqra and the VAT had been denied accordingly.

Purchases that were not for Iqra or in furtherance of Iqra's business

38. These were for sundry items such as building materials and bed linen where HMRC had challenged the deductibility of the VAT. No plausible explanation or evidence had been provided as to how these related to Iqra's business and accordingly the VAT had been denied.

Iqra's grounds of appeal

39. Iqra has not produced a skeleton argument of its case as directed by this Tribunal. As already stated, Iqra was not present or represented at the hearing. We consider it clear that Iqra do still contend that the disputed amendments were incorrect, although Iqra has chosen not to address the detailed analysis presented by HMRC in their amended consolidated statement of case dated 14 July 2016. We conducted the hearing and our deliberations taking as Iqra's basis of challenge:

(1) The grounds of appeal stated in the notices of appeal.

(2) The "notification" served in May 2016 pursuant to Judge Poole's earlier directions.

(3) Pertinent points made by Iqra's representatives in correspondence with HMRC.

(4) Iqra's email to the Tribunal explaining their decision not to attend the hearing (reproduced later).

40. Taking those together we consider a fair summary of Iqra's grounds is as follows:

(1) A related criminal prosecution was abandoned when the prosecution advanced no evidence that the business was not legitimate.

(2) The receipts are genuine documents.

(3) The purchases were made by employees and agents of Iqra.

(4) HMRC have allowed input tax credit in similar cases and it would be unfair and discriminatory not to do so in this case.

(5) HMRC have (in effect) pleaded fraud and they must adopt the burden of proof in relation to such allegations.

(6) If any VAT invoices are deficient then HMRC have failed to exercise their discretion (to accept alternative evidence) reasonably, and thus their resulting decision is perverse.

41. In an email dated 15 June 2017 to the Tribunal, Mr Lalan stated on behalf of Iqra:

> "We have approached different solicitor firms to represent us and they asking for too much fees. … i cant afford this as you can understand. I am grateful to the tribunal for giving me a chance to appeal against HMRC for the repayment. …
>
> We have no choice but to accept whatever decision the tribunal makes because i cannot afford anymore legal costs.
>
> We would like to make a statement that HMRC has targeted us for no reason, they took us through the criminal courts and said it was all a paper trail, and fake. They couldn't find anything and the case was dropped and admit their was no evidence to support it.
>
> They accepted the trade took place and Iqra made sales, to prove this HMRC went to all our customers in UK and abroad and in doing so was provided details of the trade.
>
> They could have used their discretion to pay us the VAT owed which was legit-emit, but they refused and made up all these other excuses. I feel that we were not treated correctly and because they were not successful in the criminal proceedings is why they denied the repayment.
>
> They had the names of all our collectors who were on the books. The business was legit.
>
> Tesco and Argos confirmed the sample receipts we sent were all genuine and still they have challenged us. We should have been payed the money rightfully owed to Iqra. …
>
> I once again appreciate the co-operation i got from the tribunal and its unfortunate i cant carry on proving the claim i made to HMRC was right and legitimate.
>
> I leave it now to the tribunal to make a fair decision.
>
> I hereby confirm that their will not be any representation for Iqra Associates UK Ltd.
>
> Thanking you
>
> Adnan Lalan"

Consideration and Conclusions

Culpability not in issue

42. Iqra (and its representatives) is incorrect to maintain that HMRC are alleging fraud as a basis for the disputed decisions to deny input tax. Iqra's then representatives acknowledged in May 2014 (when requesting an internal review of the disputed decisions):

> "There is no evidence that HMRC pursued an MTIC investigation into this matter. MTIC fraud was not alleged in proceedings brought to the Criminal Court. Decision letters in relation to P10/10 and 07/11 do not refer to MTIC fraud as a reason to stop payments of input tax. HMRC's enquiries were directed to the way our client bought stock from High Street retailers and the type of invoices it relied upon to support its claim for input tax. Our client fully co-operated with HMRC this can be documented throughout. It also provided HMRC with all the documentation requested including: complete analysis of all its purchases and sales of stock and IMEI numbers, a cash/bank reconciliation, the purchase of gift cards and details of personnel involved in the purchasing. On inspection of all this accounting data, one can be satisfied that there was a complete audit trail, proving that the company (IQRA Associates UK limited) bought and sold the stock it claimed VAT upon."

43. HMRC's position was made clear in Mr Simmons's review letter dated 11 July 2014:

> "… the input tax denial decisions in question here have not been made on the basis of 'MTIC fraud' or 'VAT fraud' by your client. The denials were made on various grounds, including that in HMRC's view some documents produced are not genuine; that invalid VAT invoices are unacceptable as the basis for automatic deduction of VAT as input tax; that documents produced do not relate to supplies made to your client but to other parties; and there are some smaller amounts due to other errors."

44. Further, the fact that a criminal prosecution related to similar circumstances was brought but failed is, we find, not relevant to our consideration of the appeal before us. A criminal court would adopt a different approach (for example: who bore the burden of proof, the admissibility of evidence, and the relevant standard of proof) such that we are not influenced one way or the other by the bringing or outcome of those proceedings.

45. Accordingly, this is not a case where we need consider any culpability of the taxpayer. HMRC advance their case solely on the basis that the documents used by Iqra to support its input tax claims in the two periods do not constitute valid VAT invoices or other evidence of supplies made to Iqra.

Reasonableness of HMRC's decisions

46. To the extent that Iqra's contention is that HMRC's conduct of the investigation (and/or the criminal prosecution) was unfair in some unspecified manner, that is not a matter for this Tribunal. Similarly, the allegation (again, unspecified) that HMRC's conduct was discriminatory. We note that Iqra has already followed the correct procedures by making an official complaint to HMRC.

47. Where the reasonableness of HMRC's decisions is relevant and a matter for this Tribunal, is where Iqra is challenging that HMRC unreasonably exercised its discretion (conferred by reg 29 VAT Regulations 1995) to allow "such other evidence of the charge to VAT as [HMRC] may direct." In effect, Iqra claims that HMRC's decision to refuse to accept the evidence provided by Iqra was unreasonable, given the contents of the 2007 Statement of Practice on "Input Tax deduction without a valid VAT invoice" (quoted at [18] above).

48. As to our jurisdiction on that aspect, from the caselaw in *Customs and Excise Comrs v J H Corbitt* (*Numismatists*) *Ltd* [1980] STC 231, *Peachtree Enterprises* [1994] STC 747 and *Kohanzad* [1994] STC 967 we derive the following approach, which we understand is uncontroversial:

(1) The jurisdiction of the Tribunal in this matter is only supervisory.

(2) The Tribunal cannot substitute its own discretion for that of HMRC.

(3) The question for the Tribunal is whether HMRC's decision was unreasonable in the sense that no reasonable panel of Commissioners properly directing themselves could reasonably reach that decision.

(4) To enable the Tribunal to interfere with HMRC's decision it would have to be shown that HMRC took into account some irrelevant matter or had disregarded something to which they should have given weight.

(5) In exercising its supervisory jurisdiction the Tribunal must limit itself to considering facts and matters which existed at the time the challenged decision of HMRC was taken. Facts and matters which arise after that time cannot in law vitiate an exercise of discretion which was reasonable and lawful at the time that it was effected.

(6) The burden of proof lies on an appellant to satisfy the Tribunal that the decision of HMRC was unreasonable.

49. Iqra has not specified which particular aspects of the disputed decisions were unreasonable in the above sense. We will take the contention as relating to all relevant aspects of the decisions.

50. We will determine the appeal by examining in turn each of the categories of items identified by HMRC.

Purchase receipts alleged to be not genuine

51. On 20 May 2015 Iqra's then representatives wrote to HMRC: "The Appellant instructs that it formerly withdraws from its claim to input tax on the transactions referred to by both retailers. It reaffirms that it had no idea that these documents were anything other than genuine, it maintains that it received the stock and sold it." But in February 2016 Iqra's new representatives asked for that to be withdrawn, and HMRC consented. In fairness to Iqra's new representatives (who have since also ceased to act) we note that the insistence on maintaining the genuineness of all the receipts preceded HMRC's discovery that the second batch of samples was not from the population of challenged receipts. We have approached this category on the basis that Iqra contends that all the receipts are genuine.

52. There are some 1,399 receipts in this category. We agree with the approach taken by Judge Poole in relation to sampling; it would not be reasonable to require the (purported) suppliers to authenticate all 1,399 receipts. The result of the first sample was that, for good reasons clearly stated by both Tesco and Argos, all were forgeries. Iqra was then given the opportunity to nominate a second sample for verification by the suppliers. The receipts selected by Iqra were not from the population of challenged receipts. For that reason we no attach no importance to the second sample. The first sample were clearly forgeries. The obvious and reasonable inference (as Judge Poole noted) is that all the receipts identified by HMRC as suspicious are similarly forged. Iqra had the opportunity to rebut that in the form of the second sample but (for whatever reason, on which we do not speculate) chose receipts outside those under challenge of authenticity and so has failed to rebut the inference from the first sample.

53. Accordingly, we find on the balance of probabilities that the input tax on all the items in this category should be correctly denied.

54. In relation to the reasonableness of HMRC's decision not to accept Iqra's explanations and other evidence, we find the decision was entirely reasonable. First, we do not accept the contention made by Iqra's representatives (letter to HMRC dated 30 May 2014) that "On inspection of all this accounting data, one can be satisfied that there was a complete audit trail, proving that the company bought and sold the stock it claimed VAT upon." Mr Hancox's evidence was that the business records were inadequate, and did not even include proper stock records. Second, we are satisfied that HMRC acted in accordance with their published guidance in the Statement of Practice, that the trader should first attempt to obtain a proper VAT invoice for the supplies from the supplier – Iqra seems to have made no attempt to do this for any of the purchases which it claims are genuine, and no explanation has been offered for that course of action.

Purchases alleged to be neither by or on behalf of Iqra, nor by employees or agents of Iqra

55. The number of runners is at least 169 individuals. If Iqra is contending that all those persons were its employees in the three months ended 31 October 2010 then we

do not accept that contention as there is insufficient evidence to that effect. We accept Mr Hancox's evidence that where HMRC could identify an individual as an employee of Iqra then the relevant purchases were allowed – see, for example, the letter to Iqra from HMRC dated 2 May 2014 concerning employees Mr Mitha and Mr Hussein. We find that for the runners still in dispute, they were not employees of Iqra.

56. The alternative is that the runners were self-employed agents retained by Iqra – there is also at least one example (Mr Patel) who contracted through a company. The problem faced here by Iqra is that it has produced no pertinent evidence concerning how these persons acted in relation their appointments – the only reference in Mr Lalan's witness statement is, "As requests for stock increased, I began to use the services of 'collectors or runners' who would specifically go out and buy mobile phones from retail outlets around the UK." The position is governed by s 47 VAT Act 1994 (see [17] above, and those provisions were examined by this Tribunal (Judge Kempster and Mrs Tanner) in the context of "runners" in *Gold Standard Telecom Limited v HMRC* [2014] UKFTT 577 (TC) (at [104]):

> "(1) In relation to "an agent who acts in his own name", s 47(3) grants a discretion to HMRC to treat a supply of *services* as being both a supply to the agent and a supply by the agent. Thus s 47(3) permits HMRC alternatively to treat a supply of services by such an agent as being a supply direct to the principal (ie not as being both a supply to the agent and a supply by the agent).
>
> (2) However, in relation to a supply of *goods* by such an agent, there is no such discretion – s 47(2A) is mandatory that "the supply *shall* be treated as both a supply to the agent and a supply by the agent" (emphasis added).
>
> (3) Thus, given that in the current appeal the supplies were of goods (iPhones and iPads), if the runners had acted in the capacity of "an agent who acts in his own name" then any supplies to the Company would not have been by Apple, but instead by the runners (who were not VAT-registered) and thus there was no input tax consequence for the Company. …
>
> (5) Accordingly, if that finding results in each runner being "an agent who acts in his own name", there would appear to be no input tax being charged to the Company (and thus no reclaim possible)."

57. The Tribunal noted (at [108]):

> "In *Stormseal (UPVC) Window Co Ltd v CCE* [1989] VATTR 303 (which actually concerned a self-employed contractor rather than an employee) the supply was found to have been made to the company, but only because of a finding that the agent was a *disclosed* agent:
>
> > "Applying these provisions to the present facts it is plain that there was at the outset a supply of the hotel accommodation by the hotel properly charged to tax. It is equally plain in our

> judgment that the supply was made to Stormseal not to its representative, whether he was an employee or self employed. It was Stormseal which required and ordered the accommodation, Stormseal which was thereby liable to pay for it. It was to Stormseal that the hotel looked for payment and Stormseal who in fact paid the bill.""

58. The only reliable evidence on this point is that (i) all the relevant receipts describe the customer as being the runner and there is no mention of Iqra; and (ii) Mr Hancox's evidence (paragraph 68 of his witness statement) was:

> "Mr Lalan explained that the retailers would permit sales of between 1 and 4 phone units at any single time. He said Argos restricted its sales to 1 single phone, and Apple to 2 phones. Mr Lalan advised that the individuals did not buy in the name of Iqra. The receipts are not in the name of Iqra and the collectors would never say that they were buying on behalf of Iqra."

59. We find that the runners (other than the identified employees) were acting as undisclosed agents when making purchases and therefore, pursuant to s 47(2A), the input tax on all the items in this category should be correctly denied.

60. In relation to the reasonableness of HMRC's decision not to accept Iqra's explanations and other evidence, we find the decision was entirely reasonable for the same reasons as set out at [54] above.

Allegedly unable to provide any proof of the purchase at all

61. The documentation for this category of items is even weaker than for the previous category. We reach the same conclusions for the same reasons: the input tax on all the items in this category should be correctly denied, and HMRC's decision not to accept Iqra's explanations and other evidence was entirely reasonable.

Duplicated invoices

62. For the 10/10 period this has been conceded by Iqra's representatives (email dated 28 July 2015).

63. For the 07/11 period this relates to a single item (folio 33082) which is clearly a duplicate of another receipt (folio 33083) (which has also been denied but on different grounds). Accordingly, we find that the input tax on that item should be correctly denied.

Purchases of zero-rated supplies

64. These are the pay-as-you-go elements of the purchases of a handset packaged with a PAYG credit. Iqra have not engaged with this aspect of the dispute, so we have no explanation why items clearly and correctly shown on the receipts as not carrying VAT should have been treated by Iqra as VAT-inclusive prices. It appears to be, as Mr Simmons stated in his review letter, "These are straightforward VAT

administration errors by your client and/or failures in the documentation. If your client has substantive evidence to demonstrate otherwise, it seems he has had every opportunity to produce it to the decision maker."

65. We find that the input tax on this category of items should be correctly denied.

Purchases of goods to the value of £250 or more in respect of which there was allegedly no evidence to establish that the goods had been purchased by or on behalf of Iqra

66. These are further examples of items where Iqra claims that purchases were made on its behalf. As the items were each over £250, formal VAT invoices (as opposed to "simplified" VAT invoices) are required, unless HMRC exercise their reg 29 discretion. We reiterate our findings and conclusions at [54] above and, for those reasons, we find that the input tax on all the items in this category should be correctly denied, and HMRC's decision not to accept Iqra's explanations and other evidence was entirely reasonable.

Goods returned and credit notes issued

67. This has been conceded by Iqra's representatives in correspondence (email dated 28 July 2015).

Purchases made upon credit cards that allegedly had no connection to Iqra or its employees

68. In the absence of any cogent explanation from Iqra, there is nothing to link these items to the runners or Iqra itself. As with many of Iqra's contentions, there is little beyond a bald assertion that the documents relate to purchases on which input tax is deductible by Iqra; when put to proof of that assertion, Iqra has not been able to provide convincing alternative evidence.

69. We find that the input tax on all the items in this category should be correctly denied, and HMRC's decision not to accept Iqra's explanations and other evidence was entirely reasonable.

Purchases that allegedly were not for Iqra or in furtherance of Iqra's business

70. These are the receipts for items such as building materials. Again, Iqra have not engaged with this aspect of the dispute, so we have no explanation why these items constitute deductible input tax of Iqra. Iqra has had ample opportunity to explain matters to HMRC but has failed to do so. Accordingly, we find that the input tax on this category of items should be correctly denied.

Decision

71. The appeal is DISMISSED.

72. 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.

PETER KEMPSTER
TRIBUNAL JUDGE

RELEASE DATE: 27 JUNE 2017