



TC02552

Appeal number: TC/2012/05117

*VAT –overpayment –repayment refused – whether four year cap applies -
yes – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANTHONY GELLER

Appellant

- and -

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

**TRIBUNAL: JUDGE ALISON MCKENNA
 SHEILA CHEESMAN**

Sitting in public at Bedford Square on 30 January 2013

The Appellant appeared in person

Martin Priest, of HMRC appeared for the Respondents

DECISION

1. This appeal is made under section 83 (t) of the Value Added Tax Act 1994
5 (“VATA”) against a decision of HMRC to refuse repayment of overpaid VAT. The
sums in dispute are £2486.74 in respect of the VAT accounting period 11/06 and
£3,034.32 for the VAT accounting period 02/07.

2. HMRC’s decision not to refund the Appellant’s overpayment was notified to the
Appellant on 29 February 2012 and he appealed to the Tribunal by way of his Notice
10 of Appeal dated 23 April 2012.

3. Neither the law nor the facts were disputed in this appeal. The Appellant
represented himself and explained to the Tribunal the trading difficulties he had faced
over the past few years. However, this is not an appeal in which the Tribunal has
power to apply a “reasonable excuse” test to the Appellant’s circumstances. The issue
15 for the Tribunal in this appeal was confined to the question of whether the Appellant’s
claim for repayment was subject to the statutory four year cap, so that HMRC has no
legal liability to make a repayment to him.

The Facts

4. The Appellant trades in computers. He told the Tribunal that he used to rent
20 commercial premises but that, following serious disrepair issues, he transferred the
business to his home in 2006. He also told the Tribunal that his post had not been
forwarded by his landlord after he vacated the premises and that his business had been
adversely affected by recent trading conditions. He does not retain an accountant or a
book-keeper and told the Tribunal that his business administration had at one time got
25 on top of him, although he now had a spread sheet which he used to prepare his VAT
returns. Mr Priest, on behalf of HMRC, told the Tribunal that the Appellant had
failed to file his VAT returns on no less than 48 occasions since registration, which
added up in total to some twelve years of late or missing quarterly returns out of a
total period of seventeen years of registration for VAT. HMRC’s ledger, which was
30 in evidence, showed that the Appellant is in the habit of making lump sum payments
to HMRC and filing the paperwork later. He has no penalty proceedings outstanding.

5. The Appellant registered for VAT in February 1995. The certificate of
registration states clearly that he is required to submit quarterly returns with
accounting periods ending on the last day of February, May, August and November
35 each year. At the time of registration he was issued with guidance about his
responsibilities for filing. The Tribunal was informed that he was issued with further
guidance at a meeting with officers in 1997, arranged as a result of a period of non-
filing of returns. HMRC’s records show that he was issued with further guidance in
the form of Public Notice 700/21 in 2001.

40 6. Turning to the matters specific to this appeal, the VAT return required for the
period 11/06 was not made by the due date of 31 December 2006. The VAT return
required for the period 02/07 was not made by the due date of 31 March 2007. On 12

January 2007 HMRC notified the Appellant of an assessment for the period 11/06 in the sum of £3,062. On 13 April 2007 HMRC notified the Appellant of an assessment for the period 02/07 in the sum of £2971.

5 7. Both assessments were made under section 73(1) of VATA. The Appellant did not challenge them at the relevant time and indeed he paid the relevant amounts to HMRC. The Appellant eventually submitted the VAT returns for these periods electronically on 27 February 2012. The return for the period 11/06 showed that tax was still due to HMRC in the sum of £575.26. The return for 02/07 showed that a repayment from HMRC to the Appellant was due in the sum of £63.32.

10 8. HMRC wrote to the Appellant on 29 February 2012 to advise him that there would be no refund or credit of the overpayment as the returns had been made more than four years after they were due. The Appellant wrote back on 22 March 2012 to ask for the decision not to offer him repayment to be reviewed. He addressed his letter to the “VAT and Duties Tribunal” but sent it to an HMRC office. The HMRC
15 officer who dealt with his letter treated it as an application for an appeal and advised the Appellant to file a Notice of Appeal directly with the First-tier Tribunal (Tax). It follows that the Appellant did not have the benefit of an internal review by HMRC before this matter was heard by the Tribunal.

The Law

20 9. HMRC treated the Appellant’s filing of the outstanding VAT returns in February 2012 as a claim under s. 80 (2) VATA for credit of the overcharged output tax in respect of the 11/06 return and as a claim for repayment of input tax under s. 25 (2) of VATA and regulation 29 (1) of the VAT Regulations 1995 in respect of the 02/07 return.

25 10. By virtue of s. 80 (4) of VATA, HMRC is not liable in respect of a claim for credit or repayment if the claim is made more than four years after the “relevant date”. Section 80 (4ZA) (d) provides that the relevant date is the end of the prescribed accounting period in which the assessment is made. In respect of the return for 11/06, the assessment was dated 12 January 2007 so the relevant date is 28 February 2007
30 and it follows that the four year period expired on 28 February 2011. In relation to the return for 02/07, HMRC’s assessment was dated 13 April 2007 so the relevant date is 31 May 2007 and it follows that the four year period expired on 31 May 2011.

35 11. The input tax claim in the 02/07 return is also subject to regulation 29 (1) of the VAT Regulations 1995 which provides that such a claim should be made on the VAT return for the accounting period in which the VAT became chargeable. Under regulation 29 (1A) HMRC may not allow a claim to be made more than four years after the date by which the return is required to be made. In this case, the return was required to be made on 31 March 2007 so that the four year period expired on 31 March 2011.

Conclusions

12. As the Appellant's returns were filed in February 2012, we are satisfied that the Appellant's claims for credit and repayment were made more than four years after the "relevant date" for both VAT periods and that HMRC is accordingly not liable to
5 make a refund or credit for the overpayments as a matter of law. This appeal is therefore dismissed.

13. The Tribunal was sorry to hear of the Appellant's difficulties. However, we note that he had been informed of his responsibilities. The approach he has adopted to his VAT liabilities, namely the consistent filing of late returns, carries with it the
10 inherent risk that assessments will be issued and that he will make overpayments. In this case, although he made the payments required on assessment, his returns were so late that the four year cap applied. We are sure that the Appellant will not delay so long in making returns in future.

14. The Tribunal considered it rather unfortunate that the VAT returns for the relevant period had remained available on line, so that the Appellant was able to file them so late without apparently realising that the four year cap applied. We expressed the view to Mr Priest that HMRC ought to bring the statutory period clearly to the attention of late filers of VAT returns. We also expressed the view that, if the Appellant's letter of 22 March 2012 had been treated as a request for an internal
15 review (which is how we read it) then this matter might have been concluded at that stage and the Tribunal might not have heard the appeal. It does not seem to us unreasonable that HMRC should check with the writer of such a letter what their intention is if, as here, it is unclear whether an appeal or a review is requested. These observations are intended to be helpful but they do not alter our conclusion that the
20 appeal must be dismissed.

15. 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
25 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.

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**ALISON MCKENNA
TRIBUNAL JUDGE**

RELEASE DATE: 13 February 2013

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