



TC02952

Appeal number: TC/2012/08548

TYPE OF TAX – VAT – self build – VAT refund.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STEPHEN SINGH DHILLO

Appellant

- and -

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

**TRIBUNAL: JUDGE GERAINT JONES Q. C.
MISS JANE SHILLAKER**

Sitting in public at at Bedford Square, London on 03 September 2013.

The Appellant in person.

**Miss Jones, instructed by the General Counsel and Solicitor to HM Revenue and
Customs, for the Respondents**

DECISION

1. During 2010/2011 the appellant, Mr Dhilllo, built his own new house. He was
5 entitled to, and did, reclaim VAT paid by him on building materials. After the appeal
was heard a Summary Decision was sent to the parties indicating that the appellant's
appeal had succeeded in part. By letter dated 16 September 2013 the appellant has
sought permission to appeal on the basis that one of the invoices upon which he
sought the repayment of VAT, has not been specifically dealt with in the Decision. In
10 those circumstances we decided that an application having been made that falls within
rule 40 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 we
could and should undertake a review pursuant to rule 41 of the same Rules.

2. This is our Decision having undertaken that review. The appellant is at liberty to
15 seek permission to appeal from this reviewed Decision and the fact that a review has
taken place does not prejudice is right to seek to exercise any right of appeal.

3. When he made his VAT re-claim the respondents refused it in respect of four
invoices issued by R M V Plumbing and Heating Ltd on the basis that where that
company had undertaken "supply and fit" work, it should have been zero rated and
thus VAT should not have been paid by the appellant and so could not be reclaimed.
20 The respondents took the view that where VAT is wrongly paid, that is a matter
between the payer and the payee and should be sorted out between them. We agree
that that is the correct legal position.

4. The appellant gave evidence in which he said that the four contested invoices
25 were each in respect of supply only payments. However, the wording and description
on each invoice is plain and unequivocal. It is clear that the contractor drew a
distinction between supply and fit and supply only. We were not persuaded by the
evidence given by the appellant that in respect of the invoices where fitting or
installing is referred to, those invoices were incorrect and should have referred to
supply only.

30 5. We have taken as our surest guide in this appeal the description that appears on
the face of each of the invoices. We see no reason why the contractor should have
misrepresented the true position and/or the basis upon which monies were being
requested.

6. Thus we find that in respect of the invoices dated 8 December 2010 and 12 May
35 2011 there was supply and fit and so the work should have been zero rated, with the
consequence that no reclaim can now be maintained. In respect of the invoices dated 5
February 2011 and 3 August 2011 we find that they related to supply only and so the
VAT is due for repayment.

7. The appellant makes the point that there is a fifth invoice in respect whereof he
40 should be repaid VAT. This is not an invoice that was specifically dealt with by the
respondent's but that does not mean that we do not have jurisdiction to deal with it on
the appeal to this Tribunal. Although we have referred to this as the "fifth invoice" it

is the first in time, being dated 12 July 2010. The invoice was issued by RMV and reads “Deposit £7000 paid – 30% of estimated cost of works”. Underneath, the following appears :

Totals : £20,200.00
5 Plus VAT @ 17.5% : £3535.00
Total : £23735.00
Minus : £7000.00
Balance now due : £16,735.00

10 8. There was virtually no evidence concerning this invoice. On the face of it the first references to a deposit of £7000 being a stated percentage of the “*estimated cost of works*”. To ask that is indicative of this invoice referring to work undertaken, which in all probability also involve the supply of some materials, which should have been zero rated but on which, probably incorrectly, RMV charged VAT. The
15 appellant gave no evidence to the effect that this invoice related solely to the supply of goods, with no element of labour or fitting accompanying them, so that he would be entitled to recover the VAT paid. Thus in respect of the invoice dated 12 July 2010 we are not persuaded that it is more probable than not that it refers to the supply of goods or materials alone as opposed to work and materials. Accordingly, it falls into
20 the same category as the invoices dated 8 December 2010 and 12 May 2011.

9. Upon our calculations the sum due for repayment on the two invoices to which we have referred above is £1570.88p. The appeal is allowed to that limited extent.

10. 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
25 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.

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**GERAINT JONES Q. C.
TRIBUNAL JUDGE**

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RELEASE DATE: 8 October 2013