TC03074

Appeal number: TC/2012/10567

Value Added Tax - Disputed claim for Input tax - Confusion as to which trader suppliers were making out their invoices - Cash accounting - Whether the Appellant had indeed paid in cash the amounts for which input deductions were claimed - Which period input tax, if claimable, should be deducted - Whether under the cash accounting regulations, the invoices had been receipted by the suppliers who had allegedly received payment - Failure of the suppliers' invoices to record their VAT numbers

FIRST-TIER TRIBUNAL
TAX CHAMBER

MICHAEL SAVVA
t/a
SAVVA & CO ASSOCIATES,
CHARTERED SURVEYONS **Appellant**

-and-

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

TRIBUNAL: JUDGE HOWARD M. NOWLAN
HELEN MYERSCOUGH ACA

Sitting in public at 45 Bedford Square in London on 25 October 2013

Leslie Allen of DLA Piper LLP on behalf of the Appellant

Philip Shepherd of HMRC on behalf of the Respondents

DECISION

1. This relatively simple Appeal in relation to HMRC's initial denial of claims by the Appellant to deduct input tax in respect of three supplies raised a considerable number of different, and sometimes, minor points.

2. The confusion resulted from the fact first that the Appellant was a sole trader, acting as a chartered surveyor, but also the owner of a company that conducted some somewhat related services, called Savva Associates Limited. Although it appears that the supplies, to which the disputed invoices related were now said to have been made to the Appellant, as sole trader, two different suppliers had initially made what were said to have been mistakes in that they had invoiced the limited company. There may also have been some confusion about the VAT numbers.

3. The other relatively significant point in dispute resulted from the fact that the Appellant was dealing with his VAT liabilities on the cash accounting basis, and there was a dispute as to whether there was sufficient evidence that the suppliers had actually been paid.

4. Whilst those two points about the identity of the recipient of the supplies and the issue of proof of payment were the substantive points at issue in the Appeal, we will now list, and number, the total list of points that appeared to be in issue, so that we can then deal with each one.

5. The various points were as follows:

1. The initial invoices appeared to have been made out to Savva Associates Limited. The first, from a supplier that had subsequently gone into liquidation called Ecohome Refurbishments Limited, had been accompanied by a letter, asking whether the invoice should be cancelled and replaced by an invoice issued to the sole trader. It was not actually clear that the supply was re-invoiced in the correct name. The second and third invoices had been rendered by a company called Magic Property Services Limited, and initially it sounds as if they were both issued to the company. We were shown letters from Magic Property Services Limited, however, that referred to the fact that they had been mistaken in issuing the two invoices to the company, indicating that they had then re-invoiced the sole trader. We were shown invoices in the latter form, made out to the sole trader. The amount of VAT reclaimed in respect of the three invoices was £3,326.50, £1,170.40 and £5,420.00.
2. The next point is that the two invoices from Magic Property Services Limited (but not the one from Ecohome Refurbishments Limited) had not indicated the VAT registration number of Magic Property Services Limited. The invoices had identified the VAT-exclusive charge, the VAT, and the VAT-inclusive total separately, but had simply omitted to reveal the supplier's VAT number.
3. All three invoices appeared to have been issued on 30 June 2011, and since the Appellant was reporting its VAT on the cash accounting basis, the period in which any input deduction should be allowed would depend on when the invoices had been actually paid in cash. This had not been clearly revealed.
4. The Respondents made two distinct points about proof of payment. They first suggested that there was no reliable information to substantiate that the invoices had actually been satisfied and the amounts owing actually paid in cash.

5. The related point was that the cash accounting Regulations required the supplier's invoice to have been receipted, as proof of receipt. The invoice from Ecohome Refurbishments Limited (i.e. the one that had revealed the supplier's VAT number) had indeed been receipted. The actual invoices from Magic Property Services Limited (or, to be accurate, the substituted invoices issued in the name of the sole trader rather than Savva Associates Limited) had not actually been receipted. However the Director of Magic Property Services Limited, namely Mr. Jaspal Bhogal, gave evidence before us and produced an affidavit. In his evidence he said that he had definitely been paid the amounts owing pursuant to the second and third invoices, and we also had in the file copies of letters that had already confirmed this from Mr. Bhogal.

6. We will now deal with each of those five points in turn, indicating where appropriate the contentions and admissions on the part of the parties and our decision.

7. The confusion about the identity of the Savva entity to which the supplies had been made was never made entirely clear to us, and it had actually been rendered more confusing by a letter on the file from an accountant for the Appellant. It did ultimately appear, however, that all three supplies had been made to the sole trader, and that the suppliers in all three cases had referred to the fact that they had misunderstood matters and were either prepared to re-invoice, or in the case of the second and third supplies that they actually were re-invoicing the sole trader. The Respondents' representative confirmed that HMRC were themselves satisfied that the input tax had certainly not been claimed by any other entity. Accordingly, since, the evidence of Mr. Savva was that the supplies had been made to him as the sole trader, and that the suppliers had all eventually acknowledged this, we conclude that the suppliers, and the invoices, should all be treated as having been made to the Appellant.

8. The point about the failure of the invoices to reveal the VAT number was not relevant in relation to the first invoice, since that did indicate the supplier's VAT number. In relation to the second and third invoices, we indicated that there had to be evidence that the supplier was indeed VAT registered, and had been VAT registered at the time of the supplies, since it was obviously improper for the Appellant to be able to make a claim for input tax if the supplier's invoice, while indicating an amount of VAT, failed to reveal the VAT number, it then being possible that the supplier was not even registered for VAT purposes. Mr. Bhogal confirmed in evidence that his company was still and had been VAT registered at the time of the supplies, and he confirmed that the amounts received in respect of the relevant supplies had been included in Magic Property Services Limited's relevant VAT returns, and that he would be perfectly prepared to confirm these matters to HMRC. It was further noted that the VAT number was shown on the company's letterhead in correspondence that we were shown with the Appellant's solicitors. HMRC's representative accepted that if it was demonstrated to HMRC after the hearing that the supplier had indeed been registered and had included the supplies and the acknowledged cash receipts in its VAT returns, then no point would be taken against the Appellant in relation to the failure of the second and third invoices to reveal that supplier's VAT number.

9. There was doubt as to when precisely payment had been made by the Appellant for the various supplies, and therefore, assuming that an input deduction was properly due to the Appellant, in which period the input tax should be deducted. The Appellant's representative made the practical point, however, that since the Appeal

was proceeding without the Appellant having first paid the tax in dispute, and the tax would not be owing if the Appellant won the appeal, it actually appeared to made no difference in which VAT period the input tax was deducted. On this basis, and seemingly without objection from HMRC's representative, we regarded this point as unimportant.

10. The first supplier has now gone into liquidation, and no evidence has been obtained from it that cash payment was indeed made of the first invoiced amount, beyond the fact that Ecohome Refurbishments Limited's invoice was itself duly receipted. Mr. Bhogal reconfirmed on oath that his company had received cash payment in respect of the second and third invoices, and his letters had already asserted this. He said that he needed to receive cash in order that he could directly pay his own suppliers. In the light of his readiness to confirm his company's VAT registration, and the fact that the payments for the two invoices had all been included in the supplies reported on his company's VAT returns, we will proceed on the basis that provided that that confirmation is provided to HMRC, as indicated by paragraph 8 above, our conclusion is that there was reliable evidence that the cash payments had been made.

11. That left the technical point that, as seemingly required by the cash accounting Regulations, the second and third invoices had not themselves been receipted. There were letters confirming receipt, and Mr. Bhogal's evidence before us that the cash had been received, and Mr. Bhogal had indicated his readiness to demonstrate that the receipts had even been included in his company's output tax declarations. In view of this, we concluded that this was a case where HMRC should have accepted all this secondary evidence of receipt by the supplier of the cash. Indeed, since it was the recipient of the supplies and the trader making the cash payment that would generally hold the VAT invoice, such that most naturally the supplier might acknowledge receipt by confirming this by letter (rather than necessarily on the VAT invoice that might well not be to hand at the point of the receipt of the payment) it seemed rather odd that the Regulations specified that the actual invoice had to be receipted. In any event in this case, there appeared to be no confusion in the possible respect that a receipt of cash might or might not relate to a particular supply and a particular invoice, and we concluded that HMRC should accept that the cash had been received, subject only to the Appellant or Mr. Bhogal demonstrating the points mentioned in paragraph 8 above.

12. Subject therefore to the demonstration of those points just referred to, and mentioned in paragraph 8 above, to the satisfaction of HMRC, this Appeal is allowed.

13.. This document contains full findings of fact and the reasons for our 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.

HOWARD M. NOWLAN
TRIBUNAL JUDGE

RELEASE DATE: 21 November 2013