TC03173

Appeal number: TC/2013/02755

Value Added Tax - Sale of vouchers entitling holders to balloon flights or merchandise, both to be provided by the issuer of the vouchers, up to a cash amount - whether the vouchers were "face-value vouchers" within the meaning of paragraph 1, Schedule 10A VAT Act 1994 - whether the vouchers were "single purpose vouchers" - Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

SKYVIEW BALLOONING LTD

Appellant

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

Respondents

TRIBUNAL: JUDGE HOWARD M. NOWLAN

Sitting in public at 45 Bedford Square in London on 9 December 2013

Louisa Spice, Director of Skyview Ballooning Ltd on behalf of the Appellant

John Nicholson of HMRC on behalf of the Respondents

DECISION

Introduction

1. This case was a further case in the line of cases dealing with the issue and redemption of vouchers, and the VAT question of whether VAT should be accounted for when the vouchers are issued (and payment received in the present case by the Appellant) or alternatively when the vouchers are redeemed and the ultimate supplies then made by the Appellant.

2. The present case was a somewhat simpler case than several of the earlier cases dealing with basically the same question. It was simple in the two respects that the vouchers were issued, and could only be redeemed by the Appellant itself, and in that the amount paid for the voucher corresponded precisely to the amount that the voucher later discharged of the price payable for balloon flights or merchandise. The Appeal's somewhat curious feature was that if, as is in fact the case, the Appellant wins its appeal, the ultimate result in relation to the supplies in question is that the Appellant will end up paying more in VAT than it would have done had it lost the Appeal. To the Appellant's credit, this was of little concern to the Appellant, the Appellant's principal objective in bringing the Appeal being simply to clarify the basis on which VAT should be accounted for.

The facts

3. The Appellant's basic business is to provide hot air balloon rides. It does sell certain items as well, in that it sells binoculars, T-shirts, children's T-shirts, mugs and other souvenirs and it offers the service of providing photographs during the flight.

4. As might be expected, the Appellant sells a considerable proportion of its vouchers at around Christmas time, and as will equally be obvious, the vouchers can be redeemed (if at least they are to be redeemed for balloon rides) only in the period from April to the end of October. The Appellant prepares its VAT returns on a 3-monthly basis, and so it is frequently the case that the Appellant will have issued a voucher in one period and received full payment, and it will not be until a later period that the voucher is actually redeemed.

5. Many of the vouchers are sold in the expectation that they will be given away as presents, and in order to make the present look more special the vouchers do not show, on their face, the cash value of the vouchers. Nor indeed do they specify that the voucher is for a particular ride. When the few words on the front of the voucher are read, and when the slightly more complex terms and conditions are read, it becomes clear that, although the voucher may well be purchased for an amount that enables the holder to pay for a particular chosen and intended balloon ride, the legal position is certainly not that the voucher confers a right just to what may, in the mind of the purchaser, be the envisaged use of the voucher. The legal position is quite clear, as the opening words on the front of the voucher make clear. "The voucher entitles the holder to the experience of a lifetime, a hot air balloon flight with Kent Ballooning or alternative merchandising."

6. The Appellant offers numerous different balloon rides. Several will involve the holder of a voucher for say one person or two people joining a ride with other people so that the basket is full to capacity. Such rides vary in price, according to whether they are weekday or weekend rides, and according to whether they are morning or afternoon rides. Mores special rides, for instance enabling a man and his intended fiancée to enjoy a ride on their own, possibly so that he can propose marriage during the flight, are called VIP rides, and since they are limited just to the two people in question they cost considerably more. In order to give some examples, I assume (without regard to the actual figures and prices) that an evening ride for one person might cost £110, whilst a VIP ride might cost £540.

7. Proceeding on the basis of the example figures just mentioned, the parents of the man intending to propose marriage to his girlfriend might buy a voucher for either £540 or for a greater sum, say £600. The voucher in question would not have printed on it any overt reference to £540 or £600, and would equally not say that it was a voucher for the flight obviously envisaged. It would have on its face a Voucher Number, commencing with the letters "VIP", and followed by a number, say "1234". It would also indicate the voucher's expiry date, beyond which the right to any flight or merchandise would lapse.

8. At the bottom of the voucher, below a picture of a balloon in flight, the voucher gave the Appellant's website address, its normal address and phone number, and below that were the words "The value of this voucher is individually recorded by the issuer, and can be obtained by writing to the issuer's office". We understood from the Appellant that when a voucher is issued or posted to the purchaser, there is some form of covering letter that makes it clear that the amount represented by the voucher is sufficient (assuming that that is the purchaser's intention) for some particular ride, and this of course enables the purchaser to make this clear when giving the voucher to any intended donee.

9. Reverting to the examples given in paragraphs 6 and 7 above, the position as regards redemption is as follows. The holder of the voucher representing £600 could obviously present that when having booked a VIP ride for two, and the Appellant would then record on its computer that the balance owing in respect of the particular numbered voucher would be £60. That could either be spent on T-shirts or other merchandise, or presumably the holder might book another flight (say a late afternoon flight for 2 people) whereupon he or she would have to present the voucher and pay the balance of £160 (£110 + £110 - £60) in cash. It is equally possible that while the £600 voucher might have initially been purchased with a view to two people taking a VIP ride, the holder of the voucher could certainly change his mind, and present the voucher for any other combination of rides and merchandise that he later decided to take and purchase.

10. The two final material facts were as follows. The more significant one was that one of the items of merchandise was a child's T-shirt, the supply of which would plainly be zero-rated. The incidental fact was that Mrs. Spice made it clear that, although the wording quoted in paragraph 8 above referred specifically to the holder writing to the Appellant to ascertain the original or remaining balance of the cash value on the voucher, the holder could equally phone the Appellant to ascertain that

information, the phone number being given immediately above the quoted statement about ascertaining the balance represented by the voucher.

The subject matter of the Appeal

11. The Appellant's Appeal revealed only one aspect of the present dispute. Mrs. Spice, who dealt with the Appellant's book-keeping, indicated that she had hitherto been declaring output liability, and paying VAT, for the period when vouchers had been issued and paid for, rather than in the later periods when they were redeemed. Having considered the law and various HMRC statements, however, she had later concluded that she was dealing with the VAT returns incorrectly and that she ought to have been declaring the output liabilities only when vouchers were redeemed. The formal Appeal therefore involved a claim for the repayment of £24,491.58, representing VAT that had been paid in various quarters from Q1 of 2009 to Q4 of 2012, and not redeemed in the quarters in which the relevant vouchers had been issued and paid for. No mention was made of the fact that either all, or at least the great majority, of the relevant vouchers had already been redeemed in later periods, and implicitly many would have been redeemed in later periods in which repayment claims were simultaneously being made for later voucher issues. Whilst this had not been mentioned in the Appeal documentation, Mrs. Spice made it clear that she had assumed that if she was proved right, and HMRC proved wrong, in the present Appeal, such that the appropriate occasion to return the output liabilities was when vouchers were redeemed, rather than issued, then along with the repayment of the wrongly-paid VAT she would present the correct calculations for when VAT should have been accounted for on the "redemption basis", and both adjustments would be made simultaneously. We were not told whether HMRC might be out of time to charge the resultant additional VAT for the later periods in which redemptions occurred, but it seemed that this would occasion no problem in the case of most redemptions. In addition, Mrs. Spice mentioned that she was perfectly content to arrange for the Appellant to pay whatever VAT should have been paid on the "redemption basis", regardless of whether HMRC was in time to assess it or not. Her concern was simply to see that matters were dealt with correctly.

12. I was shown a list of the periods, and the amounts of VAT reclaimed. An absolutely trivial amount was reclaimed for the first period 03/09, but that was the only period (out of the total of 19 periods) when the rate of VAT at the point of redemption would have been lower than the relevant rate at the point of issue (i.e. 15% instead of 17.5%). In the following 10 periods (06/09 to 03/11) the rate of VAT was either 15% or 17.5% when the vouchers were issued. I did not know whether vouchers had been redeemed in later periods when the rate remained the same as that in the period of issue, or whether the vouchers were redeemed in later periods when the rate of VAT had gone up (i.e. to 17.5% or 20%). It seemed obvious however that in several of the periods, the result of concluding that VAT should have been accounted for at the point of redemption rather than issue would be that the Appellant would end up paying more VAT on the "redemption basis" than was being reclaimed in the present Appeal. Mrs. Spice confirmed that she was aware of this and that she was pursuing the Appeal simply to ensure that matters were dealt with correctly. Even though the Appellant might end up owing more VAT by my allowing this Appeal, on a long-term basis the Appellant would at least enjoy an element of cashflow advantage, and if VAT was perhaps in practice unlikely to be

raised to a rate above 20% there would be little risk of the adoption of the "redemption basis" increasing the VAT chargeable on future redemptions, as against issues.

The law

13. It was common ground between the parties that the normal rule was that VAT was payable when the customers paid for the services and VAT invoices were issued. This rule, however, was over-ridden by the provisions of Schedule 10A VAT Act 1994 when the provisions of that Schedule in relation to "face-value vouchers", "retailer vouchers" and "single purpose vouchers" applied. The relevant provisions of Schedule 10A are as follows:-

> *"1(1) In this Schedule "face-value voucher" means a token, stamp or voucher (whether in physical or electronic form) that represents a right to receive goods or services to the value of an amount stated on it or recorded in it.*
>
> *4(1) This paragraph applies to a face-value voucher issued by a person who:*
> *(a) is a person from whom goods or services may be obtained by the use of the voucher, and*
> *(b) ……*
> *Such a voucher is referred to in this Schedule as a "retailer voucher".*
>
> *4(2) The consideration for the issue of a retailer voucher shall be disregarded for the purposes of this Act except to the extent (if any) that it exceeds the face value of the voucher.*
>
> *7A Paragraphs 2 to 4, 6 and 7 do not apply in relation to the issue, or any subsequent supply, of a face-value voucher that represents a right to receive goods or services of one type which are subject to a single rate of VAT."*

14. The summary therefore is that if the vouchers that the Appellant issues in the present case are "face-value vouchers", and "retailer vouchers", then unless they confer an entitlement only to one category of goods or services, the normal rule referred to in the opening words of paragraph 13 will be overridden, and taxable supplies will be treated as being made only when the vouchers are redeemed and the actual supplies then made.

The contentions of the parties

15. The Respondents had advanced two different contentions, both directed at disputing that the vouchers were "face-value vouchers". The first was that the vouchers were really for specific balloon flights, and that those flights had simply been pre-paid. The vouchers were, in other words, not principally for a given sum of money. The second was that, even if the vouchers were in reality for a given sum of money, no amount was printed on the vouchers, and more relevantly no amount was recorded in them, so that they fell outside the definition quoted above.

16. The Appellant simply disputed these points, and as my conclusion is that the Appellant's contentions are correct, I will not expand on the Appellant's reasons, but record my own conclusion in the following paragraphs.

My decision

17. Everything in the present Appeal revolves around the correct interpretation of the two defined expressions, "face-value vouchers" and "single purpose vouchers".

18. I have read all the various decided cases that were referred to me by the Respondents, but have not found any of them (one remark in *Leisure Pass Group Limited* VAT Tribunal decision no 20351 apart) to be particularly helpful, or more relevantly, remotely necessary to reach my decision in what I regard as a simple case.

19. Looking at matters from a purposive and non-literal sense initially, it seems clear to me that the common-sense answer in this case is that the vouchers are "face-value vouchers", and not excluded from the intended treatment of such vouchers by ranking as "single purpose vouchers". Whilst it may be the case that the vouchers are often purchased with a view to facilitating a particular balloon ride, and they may indeed often be redeemed for that ride, they are clearly vouchers that entitle the holder to whatever services or goods he wishes to acquire from the Appellant, up to the cash value of the voucher. As already indicated, the initial intended use of the voucher is immaterial so far as its clear legal terms are concerned. The holder can change his mind and tender the voucher for a different ride and merchandise from whatever ride (if any) may initially have been contemplated. Equally, the voucher can be used for some service or some goods that only discharge some fraction of the initial face-value of the voucher and, following that application, the voucher remains valid for the balance of the original sum.

20. In every sense, therefore, the voucher has precisely the attributes that the legislation contemplates for a "face-value voucher". It is certainly not merely evidence of the prepayment for some pre-selected item. I must still turn below, however, to the question of whether the manner in which the initial or balance value of the vouchers has to be ascertained, and the feature that no cash amount is printed on the voucher undermines its qualification as a "face-value voucher".

21. It is equally obvious that the voucher is not a "single purpose voucher". The feature that the voucher can be tendered for a balloon ride, plus an adult and a child's T-shirt (the latter being zero-rated) puts this issue beyond doubt. The example given in one of HMRC's publications to the effect that cinema vouchers that could be tendered for a film plus popcorn and other such items, were not "single-purpose vouchers" puts this issue, which is anyway absolutely clear, beyond doubt.

22. The only remaining question is whether the cash amount payable by tendering the voucher is "printed on it or recorded in it". It is obviously not printed on it, but since the notion of something being "recorded in it" is distinct from there being a cash amount printed on the voucher, I need simply to decide whether the cash value of the voucher is recorded, in some way, in the voucher. It was accepted during the hearing that vouchers plainly qualified as "face-value vouchers" if they took the form of plastic cards like credit cards, where the initial value, or the balance of the value on

the card, could be ascertained by inserting the card into the retailer's terminal. Nobody was clear during the hearing whether such cards themselves were capable of recording the amount spent on the card, and thus the remaining balance available for spending (with the shop terminal simply revealing that amount), or whether alternatively the card was inserted into the terminal to access the information on the retailer's computer, applicable to the code on the particular card. It was certainly accepted by the Respondents that in the former case, the voucher ranked as a "face-value voucher". My conclusion is that there is no basis for distinguishing between the two cases. Where the card contains the code that accesses the information on the retailer's computer, it seems to me that the reality is identical to the case where the card itself somehow records the declining balance. And it is still the code on the card that is critical to accessing the relevant information. Accordingly it is that code, contained in the card, that enables the initial and declining balance to be ascertained, and that thus records and reveals the face-value of the card.

23. Judge Avery-Jones CBE appeared to reach the same conclusion in paragraph 13 of the first of the *Leisure Pass Group* cases that I have already referred to. In the penultimate sentence of paragraph 13, he said that *"We see no difficulty in including the information on the Appellant's computer as being part of the electronic form of the voucher. Since a voucher wholly in electronic form is within the definition the information will be wholly on a computer."*

24. As the Appellant contended, their system was not as sophisticated as those operated by retailers such as B&Q, where plastic cards are read by terminals. Indeed it does not need to be so sophisticated because it does not have to address the possibility of the card being presented in countless different stores. That feature obviously requires that the cards are read by terminals, and the information then available in any of the particular issuer's stores, wherever the card might next be presented. In the present case, it is obvious that the Appellant could not afford the sophisticated equipment required in the B&Q type situation, and equally obvious that it is not needed when the voucher will only be presented at one base, and the information then fed manually into the Appellant's computer. The reality is the same, however, in that it is the code on the Appellant's voucher that is coupled with the information recorded and periodically varied in the Appellant's computer, and it is that code that enables the remaining balance on the voucher to be ascertained by the holder. I consider therefore that the facts of the Appellant's case are in substance identical to those where a plastic card is inserted into a terminal to ascertain the initial or remaining balance of cash value of the card.

25. My decision is that the individual codes on the vouchers in the present case do mean that there is recorded in the voucher the cash value of the voucher. The vouchers are accordingly "face-value vouchers"; they are not "single-purpose vouchers", and so VAT is ignored on the issue of the vouchers when payment is made. VAT supplies occur only when the cards are redeemed, and the supplies are then of standard-rated or zero-rated according to the nature of the goods or services then provided.

Right of Appeal

26. 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.

HOWARD M. NOWLAN

TRIBUNAL JUDGE

RELEASE DATE: 23 December 2013