



[2019] UKFTT 708 (TC)

TC07480

VAT – liability to register – effective date of registration – relevant date for Schedule 1(1)(3) VATA 1994 – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal number:
TC/2017/05947**

BETWEEN

DORSET TRIMMING COMPANY LIMITED

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE Rachel Short
William Haarer (MEMBER)**

Sitting in public at The Law Courts, Yeovil on 19 November 2019

Mr John Northover, accountant for the Appellant

Ms Nickeshia Davis, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents

DECISION

INTRODUCTION

1. This is an appeal by the Appellant, Dorset Trimming Company Ltd (“Dorset”) against HMRC’s decision of 4 October 2019 that Dorset should be registered for VAT with an effective date of 1 September 2015 under Schedule 1, paragraph 1(3) Value Added Tax Act 1994 (“VATA 1994”) and liable to account for VAT for the period from 1 September 2015 to 31 July 2016 amounting to £5,234.78

SUMMARY

2. Dorset says that it is not obliged to register for VAT because, on the correct interpretation of Schedule 1 paragraph 1(3) VATA 1994 its turn-over for the relevant twelve month period (the twelve months beginning 1 September 2015) did not exceed the VAT turnover threshold of £81,000 .

3. HMRC says that Dorset exceeded the VAT registration threshold in February 2011 and again in July 2015 and should have been registered for VAT from October 2011 to December 2011 and from 1 September 2015 to July 2016.

4. It was agreed before the Tribunal on 19 November 2019 that Dorset had settled the VAT due in respect of the October 2011 to December 2011 period amounting to £1230.52.

5. Dorset is still contesting the VAT due for the September 2015 to July 2016 period on the basis that the VAT threshold was not breached for the relevant period and that there was no obligation to register for VAT.

6. The parties agreed that this hearing should consider Dorset’s appeal against HMRC’s assessment of £5,234.78 for the period 1 September 2015 to 31 July 2016 only.

PRELIMINARY MATTERS

7. HMRC explained that the bundle of documents which had been provided at the Tribunal were not up to date and covered issues which were relevant to Dorset’s arguments concerning the October 2011 – December 2011 period. Ms Davis apologised and explained that she had not seen the most recent correspondence between Dorset and HMRC setting out the matters which were still in dispute. She had not been informed that Dorset had agreed to settle the amount of VAT due for the October 2011- December 2011 period.

8. The Tribunal provided copies to Ms Davis of the relevant correspondence and she confirmed that she was happy to continue with the hearing considering only the points raised in the Appellant’s letter of 30 July 2019 which were relevant to the September 2015 to July 2016 period.

9. It was agreed between the parties that there was no dispute over the amount of VAT to be charged if registration was required or Dorset’s turn-over figures for the relevant period. Dorset would pay VAT at a 7.5% rate under the “flat rate scheme” for small businesses.

10. The dispute between the parties centred on one provision in the VAT legislation; the month from which Dorset’s annual turn-over should be calculated in order to decide whether it was obliged to register for VAT under Schedule 1 paragraph 1(3) VATA 1994.

11. On behalf of Dorset Mr Northover argued that the relevant twelve month period was the twelve months beginning on 1 September 2015 which gave a cumulative twelve month turn-over of £78,117 (at the end of August 2016), below the registration threshold of £82,000.

12. On behalf of HMRC Ms Davis said that the relevant twelve month period was the twelve months beginning in July 2015, giving a cumulative twelve month turn-over of £88.559 (at the end of June 2016), above the registration threshold.

13. The difference between the parties arises from a different interpretation of the legislation at Schedule 1 paragraph 1(3) VATA 1994 and its reference to calculating the value of taxable supplies for the period of one year “beginning at the time when [Dorset] would become liable to be registered for VAT”.

14. Mr Northway says that Dorset became liable to register for VAT in September 2015. Ms Davis says that Dorset became liable to register for VAT in July 2015.

THE LAW

15. The relevant legislation concerning the obligation to register for VAT and the basis on which turnover for the relevant twelve month period is calculated are set out at VATA 1994 at Schedule 1:

Paragraph 1 (3) “a person does not become liable to be registered by virtue of subparagraph (1)(a) or (2)(a) above if the Commissioners are satisfied that the value of his taxable supplies in the period of one year beginning at the time at which, apart from this sub-paragraph, he would become liable to be registered will not exceed [the relevant VAT threshold]”.

16. The “liability to be registered” to which paragraph 1(3) refers is set out in paragraph 1(1):
“Subject to sub- paragraphs (3) to (7) below, a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule-

(a) at the end of any month, if the value of his taxable supplies in the period of one year then ending, has exceeded [the relevant VAT threshold].

17. The time when an entity is registered for VAT is not however immediate, as Mr Northover pointed out. He referred to HMRC’s VAT Manual at VATREG25100 which is headed “VAT Registration and Effective Date of Registration (EDR) calculating the EDR” and says:

“The backward look:

If the trader is liable because, at the end of any month, the total value of the taxable supplies he made in the past twelve months or less is more than the registration threshold, then the date of registration is the first day of the second month after his taxable supplies rose above the threshold”.

18. Mr Northover also referred to paragraph 5 of Schedule 1 which seems to support this statement from HMRC’s Manual. Paragraph 5 is headed “Notification of liability and registration” and states:

“5 (1) A person who becomes liable to be registered by virtue of paragraph 1(1)(a) above shall notify the Commissioners of the liability within 30 days of the end of the relevant month.

5 (2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the end of the month following the relevant month or from such earlier date as may be agreed between them”.

CASE AUTHORITIES

19. HMRC also referred us to the case authority of *Nash and Nash* MAN/96/1332

BACKGROUND FACTS

20. Dorset is a small company providing domestic upholstery repairs in Weymouth. At the relevant time it had a workforce of two people, Mr Harvey and his son.

21. HMRC wrote to Dorset on 15 November 2016 suggesting that it had exceeded the VAT threshold from March 2010 – April 2011 and that its effective date of registration for VAT should have been 1 October 2011. HMRC requested a monthly breakdown of Dorset’s turn-over from April 2010 to October 2016.

22. Mr Northover provided a schedule of Dorset’s turn-over for the requested periods in December 2016.

23. HMRC responded to that schedule pointing out that Dorset had breached the VAT threshold on two occasions, between October and December 2011 and from September 2015 to July 2016.

24. The Appellant appealed to this Tribunal on 1 August 2017 and provided reasons for that appeal on 17 October 2017 saying “HMRC have not agreed the evidence provided, the dispute is the result of a misunderstanding and HMRC have made the wrong assumptions”.

25. This dispute has been through HMRC’s ADR process but no agreement has been reached between the parties.

26. The Appellant has now agreed the disputed VAT for the October 2011 – December 2011 period.

EVIDENCE SEEN AND HEARD

27. Due to HMRC’s failure to provide an up to date bundle of documents, much of the correspondence relevant to the point under appeal was provided by Mr Northover at the Tribunal and copies were provided to HMRC and the Tribunal on the day.

28. We were shown a schedule of Dorset’s cumulative turn-over from June 2014 to December 2016 originally compiled by HMRC in December 2016, with the cumulative turn-over figures for the periods from July 2015 to June 2016 highlighted.

29. We saw a copy of Mr Northover’s letter to HMRC of 30 July 2019 setting out his interpretation of Schedule 1 paragraph 1(3) VATA 1994.

30. Mr Northover provided a copy of HMRC’s letter of 4 October 2019 setting out their VAT assessment on Dorset for the periods October – December 2011 (VAT of £1,230.52) and the September 2015 – July 2016 period (VAT of £5,234.78).

31. Mr Northover provided an extract from HMRC’s internal manual “When to register for VAT”.

32. We also had copies of various correspondence between the parties from November 2016 to October 2019.

DORSET'S ARGUMENTS

33. In its notice of appeal of 1 August 2017 (and subsequent email of 17 October 2017) Dorset states that this dispute is the result of a misunderstanding. HMRC have made the wrong assumptions and incorrectly interpretation the date when Dorset would have been "liable to register" for VAT under Schedule 1 paragraph 1(3) VATA 1994 and the date from which the value of its taxable supplies should be calculated.

34. Dorset would have been "liable to register" for VAT two months after its supplies reached the VAT threshold, on the date referred to in HMRC's guidance as the "Effective Date of Registration". That would have been on 1 September 2015. Dorset's cumulative supplies for the twelve months beginning from that date amounted to £78,117, below the registration threshold.

35. Mr Northover referred to HMRC's Manual at VATREG 215100 and its reference to the date of registration being "the first day of the second month after [Dorset's] taxable supplies rose above the threshold" and to the provisions in paragraph 5 of Schedule 1 VATA 1994 which also stipulate that registration is not required until two months after the VAT threshold is reached.

36. Mr Northover also referred to HMRC's own correspondence and the schedule set out in their letter of 11 July 2017 which refers to Dorset's "effective date of registration" as 1 September 2015, not 1 July 2015.

HMRC's ARGUMENTS

37. HMRC say that Dorset has not correctly applied the test in Schedule 1 paragraph 1(3) and that the correct twelve month period for assessing whether the VAT threshold has been breached is the twelve months starting from 1 July 2015.

38. Applying the test for the twelve months starting from July 2015, Dorset's supplies were above the registration threshold for the twelve months to 30 June 2016, at £88,559.

39. According to Ms Davis the date when Dorset became "liable to register" for VAT for the purposes of Schedule 1 paragraph 1(3) was the date when the VAT threshold was breached, in July 2015, not the later date when registration would actually have taken place, the so called "effective date of registration", 1 September 2015.

40. Ms Davis said that the two month grace period between the VAT threshold being reached and registration being required was a concession operated by HMRC reflecting the fact that it was not practical for entities to immediately register for VAT. It did not alter the date when an entity became liable to register, which would always be the date when the threshold was reached.

DISCUSSION

Findings of fact

41. The question which we have been asked to consider is a pure question of law. There is no disagreement between the parties as to the facts or the relevant turnover figures for the disputed periods.

The interpretation of Schedule 1(1)(3)

42. We have decided that HMRC's interpretation of the date when Dorset became "liable to be registered for VAT" is correct. It is July 2015 not September 2015 which is the month from which Dorset's turn-over should be calculated for these purposes.

43. We have come to this decision by looking at the specific test in Schedule 1 paragraph 1(3) and also at the wider context of the registration rules in Schedule 1 VATA 1994.

44. We have some sympathy with Mr Northover's argument, particularly by reference to HMRC's guidance in their manual, which we think, if read without any reference to the legislation could be understood to mean that Dorset was liable to be registered for VAT only from the date of effective registration, September 2015.

45. However, the statements in HMRC's Manuals are for guidance only and do not override the VAT legislation.

46. Turning to Schedule 1 paragraph 1(3) we have asked ourselves what "liable to be registered" means in this context, bearing in mind that Schedule 1 paragraph 1(3) is reflecting the primary registration rules in Schedule 1 paragraph 1(1).

47. In our view there is a difference between being liable to be registered for something (whether that is for VAT or anything else) and actually being registered; the liability triggers the obligation to become registered, but they are not the same thing. In some instances the liability and the act of registration may occur almost at the same time. In some instances there may be a time lag. For VAT purposes there is a time lag. That time lag is recognised in paragraph 5 of Schedule 1 VATA 1994 and is reflected in HMRC's Manual through the concept of the "Effective Date of Registration".

48. If we were to accept Mr Northover's approach to Schedule 1 paragraph 1(3) then that provision should have stated: "the value of [Dorset's] taxable supplies in the period of one year beginning at the time when..... Dorset would *have been registered* for VAT". But that is not how Schedule 1(1)(3) is drafted.

49. We think that our interpretation is supported by other parts of Schedule 1: the wording in paragraph 1(3) reflects the wording in paragraph 1(1) which talks about a "liability to be registered" and more significantly, the wording of paragraph 5, which seems to us to make it clear that for VAT purposes there is a time gap between the liability to register arising and the act of registration taking place.

50. Paragraph 5 demonstrates that registration for VAT is a process; the liability to register gives rise to a notification procedure (paragraph 5(1)) which then leads to actual registration by the Commissioners two months later (paragraph 5(2)). It is worth noting that while it is the taxpayer who becomes liable and who then notifies the Commissioners of that fact, it is the Commissioners who have the power to actually register the taxpayer.

51. For these reasons we have concluded that there is a real distinction for these purposes between "becoming liable to be registered" and actually becoming registered for VAT purposes and that this distinction is properly reflected by paragraph 1(3) of Schedule 1.

52. If that is correct, the relevant start date for calculating whether Dorset breached the VAT registration threshold is the date when that threshold was triggered, because that is the date when Dorset would have become liable to register for VAT under paragraph 1(1) of Schedule 1. That date is 1 July 2015.

53. Applying Schedule 1 paragraph 1(3) for the twelve months beginning on 1 July 2015, Dorset breached the VAT threshold at the end of June 2016 with cumulative supplies at that date of £88,559.

DECISION

54. Dorset's appeal is not allowed and HMRC's VAT assessment for the period from 1 September 2015 to 31 July 2016 amounting to £5,234.78 is confirmed.

COSTS

55. The Tribunal has a limited and rarely used ability to impose costs on a party if that party has "acted unreasonably in bringing, defending or conducting the proceedings". (The Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009, Rule 10)

56. With no disrespect to HMRC's representative at this hearing, it seemed to the Tribunal that HMRC had significantly failed to properly prepare either their representative or the Tribunal to be able to hear this case effectively, by failing to provide an up to date bundle of documents and failing to ensure that their representative was aware of recent developments in the Appellant's case. HMRC did not provide any reasons why this failure had occurred

57. In the event the first two hours of the Tribunal hearing were spent attempting to obtain copies of the relevant documents, eliciting up to date information from HMRC and allowing Ms Davis time to prepare for the case which was actually being argued by the Appellant before the Tribunal.

58. With the help of those at the hearing centre and the Appellant's representative, it was possible for Dorset's appeal to be dealt with. Had this not been possible the Tribunal would have had no hesitation in making an order of costs against HMRC on the basis that it had acted unreasonably in conducting the proceedings without adequate preparation.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

59. 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.

**RACHEL SHORT
TRIBUNAL JUDGE**

RELEASE DATE: 28 NOVEMBER 2019