



Neutral Citation: [2023] UKFTT 451 (TC)

Case Number: TC08827

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Glasgow

Appeal reference: TC/2022/02333

SELF-EMPLOYMENT INCOME SUPPORT SCHEME (“SEISS”) – was the appellant self-employed – no – was he eligible for a support payment? – no – can HMRC recover the grants paid? – yes – paragraph 9 Schedule 16 Finance Act 2020 – appeal dismissed

Heard on: 19 May 2023

Judgment date: 23 May 2023

Before

**TRIBUNAL JUDGE ANNE SCOTT
MEMBER IAN SHEARER**

Between

DAVID HAMILL

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

The Appellant represented himself

For the Respondents: Liam Ellis, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This is an appeal against an assessment issued on 2 December 2021 in terms of paragraph 9 Schedule 16 Finance Act 2020 in the sum of £1,519 for the 2020/21 tax year. It relates to a payment under the Self-Employment Income Support Scheme (“SEISS”) in respect of the Coronavirus Support Payment (“the Support Payment”).

2. The documents before the Tribunal were contained in a bundle extending to 242 pages. We had a Skeleton Argument for HMRC. We heard evidence from the appellant and Officer Orton.

The facts

3. On 21 June 2020, the appellant applied online to the respondents (“HMRC”) for a Support Payment for the claim period 13 May 2020 to 13 July 2020 in the sum of £810. As a result of this, payment was made to the appellant on or around 30 June 2020.

4. We are aware that the relevant page on the website gave a claim reference, states that the claim had been submitted, the grant awarded and the amount of the grant. Under the heading “What happens next”, it stated:-

“Your claim will be checked and your grant paid into your bank account in the next 6 working days. We will send an email when your payment is on its way.

HMRC will check your claim and may withhold or recover payment if your claim:

- is not made in accordance with HMRC’s published guidance
- contains or is based on inaccurate information
- is fraudulent or abusive or not made for the purposes of the scheme”.

5. On 7 September 2020, the appellant again applied for a Support Payment but this time for the claim period 17 August 2020 to 19 October 2020. As a result of this, payment of £709 was made to the appellant on or around 15 September 2020. The relevant page on the website contained similar wording to that quoted in paragraph 4 above.

6. On 11 November 2020, the appellant emailed HMRC in response to an email sent to him on 15 October 2020 which had detailed the conditions that applied in relation to eligibility for SEISS. He confirmed that he had been self-employed in the tax year 2018/19 and had submitted his tax return before 23 April 2020. However, he confirmed that he had not traded in the tax year 2019/20 because, despite having searched for work, he had been unable to secure employment and had therefore claimed Universal Credit. He had signed on for Universal Credit on 1 November 2018 and had remained in receipt thereof. He was still searching for work but had not yet found employment.

7. He pointed out that he was very confused because in previous emails dated 23 June 2020 and 15 August 2020 no eligibility criteria had been detailed. He said that the first had said that “We have checked your claim and can confirm that we are now processing your Grant” and the second that “the eligibility criteria remains the same, as for the first Grant”.

8. He argued that the emails had confirmed his eligibility for SEISS and asked for advice since he had intended applying for the third Support Payment.

9. On 12 November 2020, HMRC contacted the appellant and the call handler discussed his trading status with him. The appellant was advised to complete a voluntary “G-Form”. The appellant recalls the telephone call. He states that he had confirmed that he had ceased trading

on 31 October 2018 and that he had told HMRC that when submitting his self-assessment tax return (“SATR”) for 2018/19.

10. The appellant has no recollection of completing the G-Form. However, HMRC’s Digital Mail Service (“DMS”) records show that on 17 November 2020, the appellant had accessed the gov.uk website and completed the G-Form. That form is headed “Confirm whether you stopped trading before you claimed a Self-Employment Income Support Scheme grant.

11. It stated that he had been invited to use that service, it included his personal details and confirmation that he had ceased trading on 1 November 2018 before claiming the Support Payment. It had been an error to make the claim.

12. Officer Orton accessed the DMS and having reviewed that form she then checked the appellant’s self-assessment record. The 2018/19 SATR had been submitted to HMRC on 5 November 2019 and disclosed that the appellant had commenced trading on 18 June 2018 and ceased trading on 31 October 2018. No SATRs had been lodged for 2019/20 or 2020/21.

13. On 2 December 2021, the Officer issued the Notice of Assessment based on the fact that the appellant had not been trading in the 2019/20 and 2020/21 tax years. No penalties were imposed because the G-Form had been lodged before the deadline of 20 November 2020.

14. On 30 December 2020, the appellant lodged an appeal against the assessment pointing out that:

- (a) At all times he had been totally honest and transparent in his dealings with HMRC.
- (b) When he had claimed the first Support Payment he had been told that he was entitled to it.
- (c) HMRC had emailed him telling him to apply for the second Support Payment (see paragraph 7 above) and he had thought that because he had been entitled to the first Support Payment he would be entitled to the second.
- (d) He did not apply for the subsequent Support Payments because he understood that more tax years would be taken into account.
- (e) He argued vigorously that, because HMRC had confirmed his entitlement to the two Support Payments, it was totally wrong to “have changed the rules, post payment, purely for financial and political gain”.

15. On 1 March 2022, HMRC issued a View of the Matter letter stating that the appellant was not entitled to the Support Payments because he did not meet all of the eligibility conditions which they summarised. HMRC offered a review of the decision but the appellant decided to appeal to the Tribunal.

16. HMRC contacted the appellant on 15 December 2022 requesting further evidence as to whether the appellant had been trading in the 2019/20 tax year. In response he provided Statements of Fitness for Work and copies of Universal Credit Payments from 2018 until 7 December 2022.

17. On 21 December 2022, HMRC emailed him summarising paragraph 4.2 of the SEISS Direction (see paragraph 27 below), confirming that there was no evidence of trading in 2019/20 and 2020/21 and stating that therefore HMRC did not consider that he was eligible for the two Support Payments.

The issue

18. The issue for the Tribunal is whether or not the assessment is correct, competent and in time.

19. HMRC bear the burden of proof.

The background and legislation relating to SISS

20. In March 2020, the Chancellor announced SEISS.

21. On 26 March 2020, the government published guidance entitled “Check if you can claim a grant through the Self-Employment Income Support Scheme”.

22. Sections 71 and 76 of the Coronavirus Act 2020 provide the Treasury with the power to direct HMRC’s functions in relation to coronavirus.

23. On 30 April 2020, the government published the first Treasury Direction to HMRC and the statutory rules enabling HMRC to administer SEISS.

24. The Schedule attached to the first Direction setting the parameters for SEISS is detailed.

25. At paragraph 3.1 it stipulates that a claim must be made “in such form and manner and contain such information as HMRC may require at any time ... to establish entitlement to payment under SEISS.”

26. Paragraph 3.2 stipulates that a claim must be made by a “qualifying person”.

27. Paragraph 4 defines a qualifying person and the relevant conditions in this instance are:-

“4.2 The person must –

(a) Carry on a trade the business of which has been adversely affected by reason of circumstances arising as a result of coronavirus or coronavirus disease,

(b) have delivered a tax return for a relevant tax year on or before 23 April 2020,

(c) have carried on a trade in the tax years 2018-19 and 2019-20,

(d) intend to carry on a trade in the tax year 2020-21,

...

(f) be an individual, and”.

28. Paragraph 13 is the Interpretation paragraph and “trade” is defined as follows:-

“‘trade’ means a trade, profession or vocation the profits of which are chargeable to income tax under Part 2 of ITTOIA 2005 (trading income) and in this definition ‘trade’ has the same meaning as in section 989 of ITA 2007”.

29. A second Direction was issued on 1 July 2020 (and a number of further Directions were also issued during the pandemic).

30. The second Direction extended and modified SEISS. The Schedule to it is also detailed.

31. Paragraph 3 states that all of the provisions of SEISS being the first Direction and Schedule continue to apply except where the context otherwise provides.

32. Paragraph 2 of the Schedule to the first SEISS Direction dated 30 April 2020 reads:-

“The purpose of SEISS is to provide for payments to be made to persons carrying on a trade the business of which has been adversely affected by the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease.”

33. The Schedule to the second Direction modified and extended that paragraph 2 and the relevant provisions read as follows:-

“... ”

(b) Provide for payments to be made to relevant persons carrying on a trade the business of which has been adversely affected by the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease but who would not otherwise qualify for a payment under SEISS...”.

Schedule 16 Finance Act 2020

34. Paragraph 8 of Schedule 16 makes a recipient of Support Payments under SEISS liable to income tax where they are not entitled to it in terms of SEISS. Paragraph 8(4) details when income tax becomes chargeable which is when the Support Payments were received if there was no eligibility.

35. Insofar as relevant, paragraph 9 Schedule 16 Finance Act 2020 reads:-

“Assessments of income tax chargeable under paragraph 8

9

(1) If an officer of Revenue and Customs considers (whether on the basis of information or documents obtained by virtue of the exercise of powers under Schedule 36 to FA 2008 or otherwise) that a person has received an amount of a coronavirus support payment to which the person is not entitled, the officer may make an assessment in the amount which ought in the officer’s opinion to be charged under paragraph 8.

(2) An assessment under sub-paragraph (1) may be made at any time, but this is subject to sections 34 and 36 of TMA 1970.

(3) Parts 4 to 6 of TMA 1970 contain other provisions that are relevant to an assessment under sub-paragraph (1) (for example, section 31 makes provisions about appeals and section 59B(6) makes provision about the time to pay income tax payable by virtue of an assessment). ...”.

Discussion

36. At the heart of this appeal are the appellant’s assumptions that:

(a) when HMRC said that they had “checked” the claims that meant that they had checked his 2018/19 SATR which had been filed before the first claim (and he told us that he had also submitted an explanatory letter, making clear his change in circumstances, with that SATR), and

(b) HMRC would have looked at the preceding trading years as is the case when applying for other financial support. Therefore, in his view, 2019/20 and 2020/21 were not relevant.

37. Both assumptions are incorrect as we explained to the appellant. The claim form was checked and the level of income in the preceding years would have been relevant only to the extent that those were the years upon which the amount of the grant was calculated.

38. Simply put, as Mr Ellis correctly pointed out, the problem is that although the appellant had ceased trading in 2018/19 and had declared that to HMRC, HMRC had no way of knowing whether he had traded in 2019/20 or 2020/21. The due date for filing a SATR for 2019/20 was 31 January 2021 (or if on paper 31 October 2021) and both of those dates were sometime after the claims were submitted.

39. He could have been trading. Indeed the appellant himself stated in his email dated 11 November 2020, that it was not “strictly true” that he had stopped trading as he was actively looking for work.

40. HMRC correctly relied upon Sir Richard Scott in *Marriott v Lane* [1996] 1 WLR 1211 at page 7 where he stated:-

“If a temporary cessation of business is followed by a resumption of business, it may be that the correct conclusion on the facts would be that the original business had not, for income tax purposes or for section 69 purposes, ceased to be carried on. But, if an intended temporary cessation of business is not followed by a resumption of business, the intention is not fulfilled and the intended temporary cessation will turn out to have been permanent”

41. Of course, as can be seen, unfortunately, the appellant’s trade had in fact stopped and he remains in receipt of Universal Credit.

42. We are aware, and have pointed out to the appellant, that the online claim process for SEISS includes screens where the appellant must have confirmed that he traded in 2019/20 and intended to trade in 2020/21. It is that that HMRC checked when processing the claims.

43. Furthermore, before submitting the claim there is a screen stating that:

“By submitting this claim you are confirming the following...

- your claim is in accordance with HMRC’s published guidance....”.

At the bottom of the page there is a box requiring the taxpayer to click on it to “Accept and submit”.

44. In submitting the claims the appellant was stating that he was self-employed in 2019/20 and intended to be so in 2020/21.

45. We accept that clearly the appellant was mistaken in a number of his assumptions and neither we, nor HMRC, blame him for that. However, that cannot detract from the fact that he was never eligible for the Support Payments.

46. The appellant complained at length about HMRC and what he believed they should have done both in this matter and in relation to an issue with penalties for late filing. As we explained to him there is no decision about penalties before the Tribunal and we cannot comment on that. We have no jurisdiction in relation to any complaints he may have about HMRC and how he believes they should deal with taxpayers.

47. The appellant complains that the assessment is unfair. The decision of the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) is binding on us and that makes it explicit at paragraph 58 that this Tribunal has no jurisdiction to consider whether or not the law is fair. The simple fact is that the appellant never had any entitlement to Support Payments, he was not self-employed in 2019/20 or 2020/21 and therefore the assessment is correct, competent and in time.

Decision

48. For all these reasons the appeal is dismissed.

Right to apply for permission to appeal

49. 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.

**ANNE SCOTT
TRIBUNAL JUDGE**

Release date: 23rd MAY 2023