TC03556

Appeal number: TC/2013/04552

Value Added Tax - Claim to recover VAT following a self-building scheme - Conversion of what had been a childrens' and later older teenagers' residential home for those who suffered from mental problems or drug dependence into a dwelling house for one family - Whether the fact that the home had been run on commercial lines rendered it a building outside the definition of one used for "relevant residential purposes" - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PAUL SALTER **Appellant**

-and-

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

TRIBUNAL: JUDGE HOWARD M NOWLAN
MR DAVID E WILLIAMS, CTA

Sitting in public at 45 Bedford Square in London on 30 April 2014

The Appellant in person

Mrs. Rita Pavely of HMRC on behalf of the Respondents

DECISION

The facts

1. The Appellant and his wife had purchased a building in Hastings that had been built in 1850 and used from then until 1950 as a residential home. From 1950 to a date about 18 months prior to its purchase by the Appellant, the property had been converted so as to be suitable for its proposed use from 1950 onwards, which was as a residential home for children. The children in question suffered either from some mental disability or from drug addiction. They lived in the property, sleeping in the 9 bedrooms which had resulted from the conversion, and using communal bathroom facilities. The residential home was run commercially, the owners presumably being paid either privately or more likely by the Local Authority for the service of looking after the children, protecting them and accommodating them.

2. In the course of the Appellant's initial efforts to purchase the property, he had encountered problems with borrowing money on the property because it was classed as a commercial property not a residential property, and he eventually had to seek planning consent to change its use back into a domestic dwelling house. His intention, following purchase, was to knock down various walls that had been appropriate to the care home, but that were unsuitable once it was to become an ordinary family home again, and he also had to undertake very considerable additional works on the property. He had not initially heard of the possibility of reclaiming VAT, but that was mentioned to him by one of the contractors. He and his wife accordingly searched the HMRC website, claiming that they had received little assistance from the HMRC Helpline, and considering that they were entitled to the relevant VAT refund, made a claim to recover the VAT.

The denial of the claim

3. HMRC denied the claim for the repayment of the VAT. The ground for the refusal was that, whilst under section 35 VAT Act 1994 and Schedule 8, Group 5 VAT Act 1994, the conversion of a non-residential building into a building designed as a dwelling can result in refunds of VAT when the other, presently irrelevant, conditions are satisfied, in the present case the prior use of the building meant that it had not ranked as a "non-residential building".

4. The Appellant's claim had been heavily influenced by his understanding that for planning and mortgage purposes, the building's use had been classed as commercial and not residential, and he certainly correctly claimed that the previous owners had operated a commercial business from the premises.

5. For VAT purposes, however, the definition of a "non-residential building" Note 7A of Group 5, Schedule 8 provides, (so far as material) that:

> *"a building is "non-residential" if*
> *(a) it is neither designed, nor adapted, for use –*
> *(i) as a dwelling or number of dwellings, or*
> *(ii) for a relevant residential purpose; or*
> *(b)it is designed, or adapted, for such use but –*
> *(i) it was constructed more than 10 years immediately preceding the commencement of the works of conversion, and*
> *(ii)* ***no part of it has, in the period of 10 years immediately preceding the commencement of those works****, been used as a dwelling or* ***for a relevant residential purpose."***

6. It follows from the above definition that if in the 10 years before the conversion the building had been used for a "relevant residential purpose" (naturally another defined term) the building will not have ranked as a "non-residential building" so as to provide the opportunity for VAT refunds when

such a building is converted into a dwelling. The expression "relevant residential purpose" is a complex definition that includes uses other than the ones that are material in the present context. So far as is presently relevant, Note 4 to Group 5 provides that:

> *"Use for a relevant residential purpose means use as –*
>
> *(a) a home or other institution providing residential accommodation for children;*
>
> *(b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder,*
>
> *……*
> *except use as a hospital, prison or similar institution or an hotel, inn or similar establishment".*

We consider that it is clear that the use of the building in the present case for the vast majority of the relevant 10 year period prior to the conversion did rank as a "relevant residential purpose" within paragraph (b) just quoted, and we are also clear that the building was neither a hospital nor any institution equivalent to a prison. We were told that the children in the home had not been committed to any sort of prison or penal institution; there may have been care for them, but that was not remotely full medical care in the sense of the building ranking as any equivalent of a hospital.

7. We understood that the Appellant fairly conceded that the building had ranked as a building that fell within the definition quoted at item (b) just referred to in the previous paragraph and that it was not excluded from the definition by virtue of ranking as a prison or hospital. His contention had been along the separate lines that it was non-residential because its use had been commercial. That, however, is irrelevant to the VAT test, and results from the Appellant reading the website in relation to the possible refund of VAT with a mind-set based on planning and mortgage considerations.

8. We conclude therefore that no refund is due in this case and that the Appeal is dismissed.

9. The Appellant complained that certain passages in the text shown on the HMRC website had not been clear. It is always desirable to clarify any confusing references. We certainly concluded that no statement that was referred to us was actually wrong, so that the Appellant could not claim that he had actually been misled by the text in the website. Should HMRC consider that the text might be clarified in any way, the Appellant was certainly suggesting that that clarification would save others sharing the false expectations that he and his wife had laboured under. We should add that we have not scoured the website to add our voice to that request, either to support it or to dispute it.

Right of Appeal

10. This document contains full findings of fact and the reasons for our decision in relation to each appeal. Any party dissatisfied with the decision relevant to it 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: 9 May 2014