



TC03644

Appeal number: TC/2013/06852

VAT – Strike out application – Whether Tribunal has jurisdiction in relation to a claim for recovery of VAT under s 33 Value Added Tax Act 1994 – No – Application allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SUFFOLK CONSTABULARY

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
MR DUNCAN McBRIDE**

Sitting in public at 45 Bedford Square, London WC1 on 29 April 2014

Leslie Allen of Mishcon de Reya for the Appellant

Bernard Haley, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. On 20 November 2000 Suffolk Constabulary submitted a claim to HM Revenue
5 and Customs (“HMRC”) for approximately £430,000 of VAT incurred on the
purchase of marked and unmarked police vehicles for the period from 1 April 1995 to
31 March 2003. It is not disputed that these vehicles were acquired by the Suffolk
Constabulary to carry out its non-business public duties. However, the claim was
rejected by HMRC and the Constabulary subsequently appealed to the Tribunal.

10 2. This application, by HMRC, is for a direction that this appeal be struck out in
accordance with rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax
Chamber) Rules 2009 which provides that:

15 ... the Tribunal must strike out the whole or part of the proceedings if
the Tribunal does not have jurisdiction in relation to the proceedings or
part of them.

3. Under s 33 of the Value Added Tax Act 1994 (“VATA”) public bodies carrying
out non-business public duties, such as local authorities, may recover VAT on a
supply of good or services. Insofar as it applies to the present case s 33 provides:

- 20 (1) Subject to the following provisions of this section, where—
- (a) VAT is chargeable on the supply of goods or services to a body to
which this section applies ..., and
- (b) the supply, ... is not for the purpose of any business carried on by
the body,
- 25 the Commissioners shall, on a claim made by the body at such time
and in such form and manner as the Commissioners may determine,
refund to it the amount of the VAT so chargeable.
- (2) ...
- (3) The bodies to which this section applies are—
- 30 ...
- (f) a police authority;
- ...

4. It is accepted that as the Tribunal is a legislative creation it has only that
jurisdiction which has been conferred on it by statute (see *HMRC v Hok Ltd* [2012]
UKUT 363 (TC)). It is also common ground that s 83 of the Value Added Tax Act
35 1994 (“VATA”) not only contains an exhaustive list of the categories over which the
Tribunal has jurisdiction but does not refer to s 33 VATA.

5. Mr Leslie Allen, who appears for the Constabulary, contends that the VAT
incurred by the Constabulary in relation to the purchase of the vehicles is input tax
and, as such, the Tribunal has jurisdiction as the appeal falls within s 83(1)(c) VATA
40 which provides that “*an appeal shall lie to the tribunal with respect to the amount of
any input tax which may be credited to a person.*”

6. However, Mr Bernard Haley, for HMRC, does not agree the VAT incurred by the Constabulary was input tax and for this reason submits the claim for its recovery was made under s 33 VATA. He contends that the effect of the absence of any reference to that section in s 83 VATA is to deprive the Tribunal of any jurisdiction in relation to this appeal and relies on the decision of the Court of Appeal in *R v Customs and Excise Commissioners ex parte Greater Manchester Police Authority* [2001] STC 406 which, recognised, at [5], that no appeal to the Tribunal was possible. Like the present case, *Greater Manchester Police Authority* concerned the recovery of VAT on the purchase of police vehicles.

7. Input tax is defined in s 24(1) VATA as follows:

- (1) Subject to the following provisions of this section, “input tax”, in relation to a taxable person, means the following tax, that is to say—
 - (a) VAT on the supply to him of any goods or services;
 - (b) VAT on the acquisition by him from another member State of any goods; and
 - (c) VAT paid or payable by him on the importation of any goods from a place outside the member States,being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

Section 25(2) VATA provides:

Subject to the provisions of this section, [a taxable person] is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

Insofar as it applies s 26 VATA provides:

- (1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.
- (2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—
 - (a) taxable supplies;
 - ...

8. As the Suffolk Constabulary is registered for VAT it is a “taxable person” for the purposes of VATA (see s 2 VATA). It is also correct that it has been supplied with goods, namely the vehicles it uses to carry out its public duties. However, as vehicles are not used for the purpose of any business carried on by the Constabulary it follows that the VAT it has paid cannot be input tax within s 24 VATA. Even if this were not the case and the VAT chargeable on the vehicles was to be treated as input tax the

Constabulary would only be entitled to credit such input tax if it were attributable to taxable supplies it made in the course or furtherance of its business, which it is not.

9. Therefore, in the circumstances of this case, s 83(1)(c) VATA cannot provide the Tribunal with the jurisdiction to determine the appeal.

5 10. It is accepted the Constabulary's appeal claim cannot fall within any other category of appeal within s 83 VATA and, as such, it cannot fall within jurisdiction of Tribunal. Under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 the Tribunal "must" strike out proceedings if it does not have jurisdiction in relation to them.

10 11. It therefore follows that as we do not have jurisdiction in relation to this appeal it must be struck out and we direct accordingly.

12. 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.

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**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 29 May 2014

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