TC04406

Appeal number: TC/2014/06243

PROCEDURE - Rule 8(2) - Application to strike out Notice of Appeal on mandatory basis - Value Added Tax Act 1994 section 83 - Whether a certain letter constituted an appealable matter - No - Whether Tribunal had jurisdiction in relation to the proceedings- No - Whether Notice of Appeal should be struck out - Yes - Appeal struck-out

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR SALEEM IQBAL **Appellant**
trading as PLATINUM EXECUTIVE TRAVEL

- and -

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

TRIBUNAL: JUDGE DR CHRISTOPHER MCNALL

Sitting in public at Alexandra House, Manchester on 25 March 2015

Mr Taher Nawaz, of Taher Nawaz & Co, Accountants, for the Appellant

Mr John Nicholson, Officer of HMRC, for the Respondents

DECISION

1. This appeal is brought by way of a notice of appeal dated 19 November 2014, against a purported decision of HMRC contained in a letter dated 5 September 2014 ("the Letter").

2. This present decision concerns the status of that Letter, and whether, in particular, it constitutes an appealable matter within the meaning of the primary legislation, which in this case is the Value Added Tax Act 1994 ("the 1994 Act").

3. The Letter reads as follows:

> "I have considered the information provided in your letter (sic) of 8 April and 15 May. Based on the evidence you have sent me I cannot authorise the VAT repayments. I am unable to understand how Platinum Executive Travel are able to be in the business of self drive hire without the appropriate insurance. You have confirmed that they have not been able to obtain insurance cover. You have provided some evidence of very short term cover and stated as the business is seasonal the vehicles are not used all the time.
>
> In order for VAT to be claimed as input tax on the purchase of cars the vehicles must be used primarily for self drive hire. The evidence provided so far is insufficient to enable the vehicle is to be used primarily for self-drive hire.
>
> I await your comments."

4. On 29 December 2014, HMRC applied to have the appeal struck out pursuant to Rule 8 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/293). HMRC contends that an appeal lies to the tribunal only in respect of the matters which are provided for in s 83 of the 1994 Act, that the Letter was not such a matter, and that the appeal "was therefore premature".

5. By way of an email dated 31 December 2014, the appellant indicated that he wished to oppose HMRC's application. The appellant says that HMRC's letter of 5 September 2014 was effectively a decision to refuse an input VAT claim by the appellant, who operates a luxury car-hire business. It was further said that the grounds for rejecting the input tax claim were "spurious in the extreme" and that HMRC was now simply trying to resile from its decision, and avoid the consequences of a successful appeal, by suggesting that it was not a decision at all. A satellite issue also arose insofar as, on 16 October 2014, HMRC issued an information notice. That was resisted, by way of an email dated 21 November 2014, on the basis that once an appeal had been raised against a decision, HMRC did not have the right to seek any further information.

6. The issue which the tribunal has to decide is a narrow one. It is whether the letter of 5 September 2014 constitutes an appealable matter within the meaning of s 83 of the 1994 Act so as to engage the jurisdiction of the tribunal.

The parties' arguments

7. The competing arguments before me show that even an ordinary English word is capable of generating lively debate as to its meaning.

8. HMRC's submissions were that the Letter was simply inviting comment, before raising a formal assessment, and was not the final word. Particular attention was drawn to the very last sentence of the Letter: "I await your comments". It was argued that, if letters of this kind were to be treated as appealable matters, then it would be quite impossible, in practical terms, for HMRC to undertake any inquiry. It was said that HMRC was in fact still conducting its investigation, and that the appellant would not be prejudiced by any strike out because ultimately he still had his appeal rights once a formal decision was made.

9. The appellant submitted that the Letter firstly had to be viewed in the context of preceding correspondence. Mr Nawaz pointed to an email sent to HMRC on 2 September 2014, in which the appellant sought a reply to an earlier letter, dated 15 May 2014, or an explanation as to why a requested refund had not been released. It was submitted that the email of 2 September 2014 was asking for a decision, and that therefore the Letter, being written in response, must be such a decision. Secondly, Mr Nawaz also undertook a careful, sentence by sentence, analysis of the Letter, so as to demonstrate its essential quality as a decision. He submitted that it could not be said that the Letter was anything but a decision. Thirdly, and as to prejudice, it was submitted that HMRC would not be prejudiced if the appeal remained effective, and that "what was sauce for the goose was sauce for the gander."

Discussion

10. Section 83(1) of the 1994 Act ('Appeals') refers to 'matters' rather than 'decisions'. But the 1994 Act is a consolidating Act, and the presumption with such acts is that no change in the law is intended. The presumption must therefore be that, as with s 40(1) of the VAT Act 1983, a decision is the prerequisite of the Tribunal's jurisdiction. This presumption is confirmed by related provisions elsewhere in the 1994 Act, for example s 84(3) (which refers to appeals against decisions). Accordingly, without a decision there is no appealable matter, and can be no appeal.

11. The Oxford English Dictionary defines a decision as "the final and definite result of examining a question; a conclusion; the making up of one's mind on any points or on a course of action; a resolution or determination". All these definitions share a theme, which is one of finality. On occasion, the courts have been called upon to determine the meaning of decision, and have held it to be a popular and not a technical word meaning little more than a concluded opinion: see, for instance, *Re Dover and Kent County Court* [1891] 1 QB 75.

12. In this case, and having weighed up the parties' competing submissions, I do not consider that the Letter is a decision, whether in any of the dictionary senses, or in the sense of a concluded opinion. Read as a whole, the Letter does not express any final conclusion or concluded opinion. At its highest, the Letter expresses nothing more

than a provisional view, on the basis of the evidence and information supplied to HMRC at that point. It does not definitively rule out the claim for input tax. Nor does it makes mention of any figures. The very last sentence - "I await your comments" - is, in my view, an invitation to further dialogue, giving the taxpayer the opportunity to respond, before any decision was reached.

13. Although the tribunal was told - and it seems to be common ground between the parties - that there is no longer any prescribed form routinely used for notifying a formal assessment (with the effect that assessments can be and are notified by letter) I nonetheless do not consider that the Letter in question, read neutrally and objectively, can be regarded as such an assessment.

Conclusion

14. For the above reasons, I do not consider that the Letter in fact constitutes an appealable matter or decision for the purposes of s 83 of the VAT Act 1994.

15. Therefore, there is no appealable matter or decision (yet) against which any appeal can properly lie. In the absence of any appealable decision, this tribunal has no jurisdiction. The application of Rule 8 means that HMRC's application must succeed, and the notice of appeal is struck-out.

16. For the sake of completeness, and the avoidance of any doubt, I record HMRC's acceptance that the striking out of the present Notice of Appeal does not operate as a bar to any subsequent appeal in relation to any question relating to the appellant's liability to this VAT. HMRC has accepted that it will not, in relation to any such appeal, seek to argue that it was re-litigation.

17. 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.

DR CHRISTOPHER MCNALL
TRIBUNAL JUDGE

RELEASE DATE: 13 May 2015