[2015] UKFTT 0228 (TC)

TC04420

Appeal number:TC/2013/02332

VAT – global accounting scheme – section 50A VATA 1994 – Article 13 VAT (Special Provisions) Order 1995 – VAT Notice 718 – failure to comply with record keeping requirements – quantum of assessment – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

R & M STANSFIELD ENTERPRISES LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN
MR LESLIE BROWN

Sitting in public in Manchester on 9 March 2015

Mr Ray Stansfield and Mrs Maria Stansfield, directors of the Appellant

John Nicholson of HM Revenue & Customs for the Respondents

DECISION

Background

1. The appellant is in business as a salvage dealer, mainly dealing in salvaged car parts. It has been in business for many years. Part of the business included a contract with the insurer Axa Plc to collect vehicles which were insurance write offs. Parts would be sold off the vehicles over a period of years. The appellant also purchased stock from other sources.

2. In order to account for VAT on supplies to customers the appellant sought to use what is known as the Global Accounting Scheme ("the Scheme") which we describe in more detail below. Subject to various conditions, the Scheme essentially enables traders to account for output tax on the margin earned on a sale, rather than accounting for output tax on the sale value and input tax on the purchase cost. The Scheme calculations take into account opening stock when a trader first starts using the Scheme.

3. Mr Anthony Platt, an officer of HMRC visited the appellant in November and December 2011. He was not satisfied that the appellant had complied with the conditions for the Scheme. In due course on 19 November 2012 Mr Platt made assessments to output tax based on the sales value of supplies by the appellant in VAT accounting periods 03/10, 06/10, 09/10 and 12/10. The total amount of the assessments was £22,193 and those are the assessments under appeal.

4. The grounds of appeal may be broadly stated as follows:

(1) The appellant had operated the Scheme, but the value of opening stock had been significantly understated.

(2) The true level of opening stock and subsequent purchases meant there was no margin on which to account for output tax.

(3) The assessment does not take into account a reduction in sales values amounting to £11,161 due to goods returned by customers.

(4) The assessment does not take into account the cost of vehicles purchased from Axa Plc.

5. Before considering the evidence and our findings of fact we consider the Scheme in more detail.

The Global Accounting Scheme

6. *Section 50A Value Added Tax Act 1994* ("VATA 1994") makes provision for margin schemes. Where the Treasury makes an Order pursuant to section 50A a taxable person can opt to account for VAT by reference to the profit margin on supplies rather than the sales value. Orders can be made in relation to motor vehicles and second hand goods amongst other types of supplies. We are concerned with supplies of second hand goods.

7. The Scheme is one such margin scheme. Provision is made for the Scheme in *Article 13 Value Added Tax (Special Provisions) Order 1995 (SI 1995/1268)*. It applies to supplies of second hand goods, but not to individual items where the sales value is more than £500. Article 13(1) provides that the Scheme is "*subject to complying with such conditions as the Commissioners may direct in a notice published by them for the purposes of this Order*". The Commissioners have published a notice which is *Notice 718 The VAT Margin Scheme and Global Accounting*.

8. The detailed provisions of the Scheme are set out in Article 13 as follows:

> " *(3) The total profit margin for a prescribed accounting period shall be the amount (if any) by which the total selling price calculated in accordance with paragraph (4) below, exceeds the total purchase price calculated in accordance with paragraph (5) below.*
>
> *(4) For the purposes of paragraph (3) above the total selling price shall be calculated by aggregating for all goods sold during the period the prices (calculated in accordance with article 12(5) or (6) above as appropriate) for which they were sold.*
>
> *(5) For the purposes of paragraph (3) above the total purchase price shall be calculated by aggregating for all goods obtained during the period the prices (calculated in accordance with article 12(5) above) at which they were obtained and adding to that total the amount (if any) carried forward from the previous period in accordance with paragraph (6) below;*
>
> *(6) If in any prescribed accounting period the total purchase price calculated in accordance with paragraph (5) above exceeds the total selling price, the excess amount shall be carried forward to the following prescribed accounting period for inclusion in the calculation of the total purchase price for that period.*"

9. The Scheme is generally helpful to traders such as the appellant who sell low value eligible goods in bulk. VAT is accounted for on the aggregate selling price of all supplies in an accounting period less the aggregate purchase price of goods obtained in the period. Where in any accounting period the aggregate purchase price exceeds the aggregate selling price the excess is carried forward to the following prescribed accounting period and treated as if it were a purchase in that period.

10. Traders are entitled to take account of opening stock in the Scheme calculations. The opening stock is treated as if it were part of the aggregate purchase price of goods obtained in the first period in which the Scheme is operated.

11. The provision for carry forward results in what is described in Notice 718 as a "negative margin". In other words the value of purchases exceeds the value of sales and no output tax falls due. The excess or negative margin is carried forward to the next accounting period.

12. Paragraph 15 of Notice 718 requires traders to keep records of scheme calculations for each accounting period, including those which result in a negative margin to be carried forward. Details of all purchases must be recorded, together with

details of all sales made under the Scheme so as to distinguish them from other types of transactions.

13. The requirement for record keeping is plainly directed at ensuring that HMRC can be readily satisfied that there is evidence of the margins achieved and the amount of VAT payable.

14. In relation to motor vehicles which are "scrapped", records must also be kept to show that the vehicle no longer exists as such and that parts from the vehicle are eligible for the Scheme.

Findings of Fact

15. We heard evidence from Mr Platt on behalf of HMRC and from Mr and Mrs Stansfield who are directors of the appellant.

16. The appellant accumulated stock over a period of at least 15 years. It held over 500 vehicles in stock at any one time with various degrees of damage. It is not clear when the appellant first started to account for VAT using the Scheme. Mrs Stansfield said that in 2012 the appellant had only been using the Scheme for about 2 years. A visit report by officer Paul Sheppey following a visit on 31 July 2008 records that the appellant was using the Scheme in period 06/08 and had used it in the previous period.

17. We are satisfied that the appellant had been using the Scheme since at least the beginning of 2008. We are satisfied from Mr Sheppey's visit report that the Scheme calculations were being carried out properly at the time of his visit. Mr Sheppey also estimated that the appellant would not be declaring substantial amounts of output tax for the following 3 or 4 accounting periods.

18. Mrs Stansfield recorded sales and purchases in a red account ledger. She would also record when parts were returned by customers and refunds given.

19. Mr and Mrs Stansfield said that the business had suffered a break-in during 2009 and some of the records for that year, in particular the underlying purchase records and those relating to the Scheme calculations had been taken. We have no reason to doubt that evidence.

20. The appellant did not produce in evidence any Scheme calculations or full records for the accounting periods 03/10 to 12/10. The records did however contain details of the sales of second hand parts in those periods. Mr Platt noted them down and the corresponding assessments which he made were as follows:

Accounting Period	**Sales £**	**Output Tax £**
03/10	40,731	6,066
06/10	46,754	6,963
09/10	46,664	6,949
12/10	14,876	2,215

Total:	£ 149,025	£ 22,193

21. The appellant's purchases of salvaged vehicles and sales of parts in the calendar years 2009 and 2010 were as follows:

Year:	**2009** **£**	**2010** **£**
Sales:	208,816	173,782
Purchases:	33,900	46,528

22. The appellant contends that the opening stock figure which it used when it started the Scheme was incorrect. The true figure ought to have been in the region of £600,000. The actual figure used was not evidenced. As such the appellant contends that there would still be a negative margin and no output tax for all the periods which have been assessed.

23. During his visit on 31 July 2008 Mr Sheppey recorded the Scheme calculations for period 06/08. This is the best evidence we have of the position at that time. The stock carried forward from period 06/08 otherwise known as the negative margin was £118,772. Mr Platt calculated that if that was the negative margin carried forward in 2009 then the amount of output tax due in 2009 and 2010 would have been as follows:

2009

Margin = sales – (purchases +negative margin)
The margin would therefore be 208,816 – (33,900 + 118,772) = £ 56,114
Output tax would be 56,714 × 3/23 = £7,323

2010

Margin = sales – purchases (There was no negative margin brought forward)
The margin would therefore be 173,782 – 46,528 = £ 127,254
Output tax would be 127,524 × 7/47 = £ 18,953

24. The appellant declared no output tax on sales of parts in these two years. The only output tax it accounted for was on sales of commercial vehicles, salt and grit. The only issue on this appeal relates to declarations for sales of parts.

25. Mr Platt identified on the basis of his calculations that the output tax for the two years using the Scheme would have totalled £26,275. In the event, however he only assessed four periods in 2010 without reference to any Scheme calculations.

26. It is notable that the appellant's figure for sales in 2010 was £173,782 whereas the sales identified by Mr Platt and upon which he assessed output tax are £149,025. Using the latter figure in a Scheme calculation for 2010 would give a total output tax due for 2009 and 2010 of £22,588.

27. Mr and Mrs Stansfield maintained that Mr Platt had failed to give credit for customer returns valued at £11,161. There was no documentary evidence to that effect. It may be that Mr Platt did take into account customer returns because his

figure for sales in 2010 was £149,025 whereas the appellant provided a figure of £173,782. Whatever the reason for that difference, the appellant has not satisfied us that Mr Platt's figure for sales of parts in 2010 is overstated.

28. Sometime prior to 2006 the appellant was involved in a dispute with Axa plc. The appellant had an agreement whereby it collected and stored salvaged vehicles on behalf of Axa. It would obtain title to the vehicles upon payment of an agreed sum to Axa. The appellant alleged that Axa had wrongly terminated the agreement. The appellant's claim was compromised with several hundred vehicles being released to the appellant and Axa waiving any charges under the agreement. Axa also consented to an assessment of damages on the basis that it was liable to the appellant for 6 months loss of profits. Damages were assessed at £261,000, without any deduction for profit on the vehicles released to the appellant.

29. Axa appealed the decision on the assessment of damages. In or about July 2006 Axa's appeal was allowed in part. The appellant had to bring into account any benefit from the termination, including the value of the cars which had been released to it by Axa.

30. Mr and Mrs Stansfield told us that the litigation was not finally concluded until 2009 or 2010 when their liability for costs was agreed. Until then the appellant was unable to deal with the vehicles released to it. The vehicles did not appear in the appellant's books and were not included in the stock figures recorded by Mr Sheppey. The vehicles were de-registered and were broken up for sale as spare parts. The majority were still in stock in 2010.

31. Mr and Mrs Stansfield also told us that the purchase cost of opening stock used in the Scheme calculations had been understated but they were unable to estimate by how much. All they could say was that in their experience it would not have been possible to make sales totalling £382,598 in 2009 and 2010 from purchases totalling only £80,428. They contended that explanation must be that existing stock holdings were being sold.

32. The burden in this appeal is on the appellant to establish that the assessment is overstated. We cannot be satisfied on the basis of the evidence produced what if any figure ought to be added to the stock identified by Mr Sheppey in 2008. There is no reliable evidence from which we can identify the level of opening stock or the level of stock at the beginning of 2010. We cannot accept assertions by Mr and Mrs Stansfield as to the level of stock in the absence of the records required by the Scheme or other reliable evidence.

Decision

33. Mr Nicholson for HMRC submitted that in the absence of records to support the Scheme the default position is that VAT must be accounted for on the full sale price rather than the margin. If a trader fails to comply with the record keeping conditions it must account for VAT on each supply made during the relevant accounting period.

34. The appellant contends that the Scheme calculations noted by Mr Sheppey and relied on by Mr Platt in his analysis were incorrect. In particular that they failed to take into account the full extent of the appellant's stock. They further contended that Mr Platt had failed to take into account customer returns.

35. For the reasons given above we are not satisfied on the evidence before us that the purchase cost of stock was understated at the time of Mr Sheppey's visit. Nor are we satisfied that Mr Platt failed to take into account the sales value of customer returns.

36. The appellant has not been able to produce any reliable, alternative Scheme calculations for the four accounting periods in 2010.

37. We are satisfied that the best evidence of the negative margin as at the beginning of 2009 was that recorded by Mr Sheppey. We are not satisfied that any sum should be added to that figure in order to take into account additional stock whether from the Axa compromise or otherwise.

38. In circumstances where a trader has lost supporting records in relation to the Scheme it seems to us that HMRC could seek to estimate to best judgment what the output tax would have been if the Scheme had been properly applied in the accounting periods in question. That is what Mr Pratt sought to do in the present case. He used the information available to him. Namely the latest reliable figure for negative margin brought forward from 2008 and the actual sales and purchases in 2009 and 2010. That was the best estimate he could make. Mr Platt's calculation showed a figure for output tax for 2009 and 2010 of £26,275.

39. Mr Platt also calculated what the output tax would have been for the four accounting periods in 2010 based simply on sales values rather than the margin. He calculated that figure as £22,193 and in the event that was the assessment he made.

40. It is not clear whether at the time of his assessment in November 2012 Mr Platt would have been in time to make an assessment for the whole of 2009. The issue was not raised during the hearing. The point however is academic. We are considering an assessment in relation to 2010 where there is no doubt that the assessment was in time.

41. Focussing on the four accounting periods in 2010, the appellant did not produce any Scheme calculations or Scheme records which would suggest that Mr Platt's assessments were overstated. By 1 January 2010 the break-in had already occurred. If the appellant wished to continue using the Scheme in 2010 then it should have taken steps to identify the purchase cost of stock on hand as at that date. It did not do so with the result that we have no such figure and no means of making a reliable estimate. In those circumstances we accept Mr Nicholson's submission that the appellant was not entitled to use the Scheme in 2010. It ought to have accounted for VAT on the sales value of individual supplies. We accept that the failure to do so was in part at least a result of the difficult and confusing situation in which Mr and Mrs Stansfield found themselves.

42. We have no reason to think that Mr and Mrs Stansfield have done anything but their honest best on behalf of the appellant to account for the right amount of VAT. However we must decide this appeal on the evidence available to us. On the basis of that evidence we are not satisfied that the amount of the assessment is overstated.

43. In the circumstances we must dismiss this appeal.

44. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 28 May 2015