



TC07945

Appeal number: TC/2019/00267

VATA 1994 - Schedule 10 paragraph 5(1) - VAT assessment for over claimed input tax - VAT incorrectly charged by seller on sale of residential flats - exempt supply - VAT paid by Appellant and included in its VAT return as a claim for input tax - initially accepted by HMRC - error discovered and assessment raised following subsequent vat visit - Appeal dismissed and assessment confirmed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KANG & MAND LIMITED

Appellants

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER SIMON BIRD**

**Sitting in public at Tribunals Service, Centre City Tower, 5-7 Hill Street,
Birmingham on 17 February 2020**

Mr J Vaghela accountant for the Appellant

Ms Karleen Ellis, Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

1. This is an appeal by Kang & Mand Limited, (“the appellant”) against the decision of the Respondents (“HMRC”) to issue the appellant with an assessment of £63,627 for over claimed input tax for the period 09/16, on the purchase in July 2016, of The Vine, Vauxhall Street, Wolverhampton, WV1 4TA. (“the Property”).
2. The assessment has been made by HMRC as the Property is used for exempt supplies. The appellant has been unable to provide the required evidence to support the VAT reclaim in relation to the purchase of the Property. In addition, the Property is used for exempt supplies.

Background facts

3. The appellant company was incorporated on 10 December 1993 with VAT registration no 547 3153 44. Its directors are Mr Avtar Singh and Mr Balwinder Singh. The company is based in Smethwick, West Midlands and originally traded as H Q Foods Limited, in the supply of frozen food and paper products to the fish and chips industry. On 30 September 2017, the company ceased that business activity and began to trade as an Investment Company, holding freehold commercial and residential properties.
4. In August 2016 the appellant purchased the Property from Dudley Estates Limited (“the seller”) at the price of £315,000. The seller charged VAT on the purchase price of £63,000 which the appellant paid on completion.
5. The Property consists of a former public house, converted into residential flats, and was still used for that purpose when purchased by the appellant.
6. The appeal bundle included a copy of the seller’s completion statement showing VAT as chargeable, but no copy VAT invoice. There was no Notice by the sellers to HMRC electing to waive the VAT exemption, which in any event would not have been accepted by HMRC.
7. The completion statement also showed that SDLT had been paid to HMRC on a VAT inclusive price of £388,000, resulting in an overpayment of £3,150 SDLT.
8. Section 31 of the VAT Act 1994 states that goods and services specified in Schedule 9 to the Act are exempt supplies. Schedule 9, Group 1 specifies those supplies of land and buildings that are exempt from VAT and those that are excluded from the exemption. The sale of a building which is comprised of dwellings, which are not new builds, is an exempt supply.
9. The seller had therefore incorrectly charged VAT on the Property, although the proprietors of the appellant company were unaware of that at the time.
10. Following completion of its purchase of the property, the appellant submitted an input tax claim of £63,627 for VAT period 09/16. This figure represented the £63,000 VAT charged by the seller and VAT on legal fees paid by the appellant to its solicitors.

11. Section 73 (3) of the VAT Act 1994 allows HMRC to make an assessment if it appears to them that a return is incorrect or a repayment should not have been paid.
12. In order to claim input tax the appellant must provide evidence of the input tax paid, that is, a sales invoice or equivalent showing the VAT paid. (Regulation 29(2)(a) of the VAT Regulations 1995) (SI 1995/2518).
13. Following a VAT inspection of the appellant's records, on 18 August 2017, HMRC advised the appellant that an assessment would be raised of £63,627 in relation to input tax claimed in VAT period 09/16. The decision was made on the basis that no evidence had been received as required by Regulation 29(2)(a) of the VAT Regulations 1995.
14. The notice of the VAT assessment was issued on 4 June 2018, followed on 19 June 2018, by a Notice of Assessment Form VAT 655, to notify the company proprietors of the over-declaration.

The Legislation

15. Section 31 of the VAT Act 1994 holds that goods and services specified in Schedule 9 to the Act are exempt supplies. Schedule 9, Group 1 specifies:

“The grant of any interest in or right over land or of any licence to occupy land, or, in relation to land in Scotland, any personal right to call for or be granted any such interest or right, other than -

(a) the grant of the fee simple in -

(i) a building which has not been completed and which is neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant residential purpose or a relevant charitable purpose;

(ii) a new building which is neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant residential purpose or a relevant charitable purpose after the grant;

(iii) a civil engineering work which has not been completed;

(iv) a new civil engineering work; those supplies of land and buildings that are exempt from VAT and those that are excluded from the exemption.”

16. The sale of a residential property falls within this and is therefore an exempt supply. No input tax can be claimed in relation to a supply of that nature.
17. The HMRC officer gathered the initial information from a VAT visit held on 18 August 2017. The assessment was issued on 4 June 2018 and therefore the assessment has been made in accordance with the time limits set out at s 73(6) and 77(1)(a) of the VAT Act. The assessment is subject to the normal four-year capping provision of s 77 (1).
18. On 14 November 2018, the decision to raise an assessment was reconsidered on review but upheld.
19. The appellant lodged an appeal with Tribunal on 27 December 2018.

Appellant's case

20. The appellant's grounds of appeal are that:
- i. Dudley Estates Limited, a VAT registered trader, was legally required to charge VAT of £63,000.00 and account for that sum to HMRC following the sale of the property to the appellant. As HMRC will have received that amount from the vendor company, there is no loss of revenue to the H M Treasury in allowing the input tax claim.
 - ii. If the appellant company's claim to recover the input tax is not accepted HMRC will receive a windfall of £63,000, which is contrary to VAT law and against the principles of natural justice.
21. At the hearing, the appellant's proprietor Mr Balwinder Singh conceded that in fact the appeal was misconceived. He accepted that a mistake had been made and that as the sale of the property was an exempt supply, VAT should not have been charged by the seller.
22. At the request of Mr Singh an adjournment was granted by the Tribunal so that the incorrectly paid VAT could be recovered from the seller, repaid to HMRC and the appeal formally withdrawn.
23. Directions were issued by the Tribunal agreeing to an adjournment to 29 May 2020 on the basis that the matter would be decided on the papers if the appeal had not been withdrawn by that date.
24. At the request of Mr Vaghela, Mr Singh's accountant, an extension of time was agreed by the Tribunal on 2 June 2020 allowing the appellant until 16 June 2020 to confirm that matters had been resolved.
25. Nothing further has been heard from the Appellant or its representatives.
26. The appeal is dismissed and the assessment for £63,627 for over claimed input tax is confirmed.
27. 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.

MICHAEL CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 17 NOVEMBER 2020