

Commissioners for His Majesty's Revenue and Customs (Appellant) v NHS Lothian Health Board (Respondent) (Scotland)

Case ID: 2020/0135

Case summary

Issue

What is the correct approach that should be taken by the courts and tribunals to evidence and the burden and standard of proof in historical claims for the recovery of overpaid Value Added Tax.

Facts

The law in relation to Value Added Tax or 'VAT' confers a right to deduct the VAT paid on input expenditure for business activities. During the period 1974-1997, NHS Lothian had operated a number of scientific labs which undertook some business activities. NHS Lothian did not reclaim the input VAT paid in respect of those years until after the enactment of section 121 of the Finance Act 2008, which provided that claims for recovery of input tax incurred in accounting periods ending before 1 May 1997 could be made without any time limit provided that the claim was made before 1 April 2009. NHS Lothian's claim for repayment of the overpaid tax was rejected by HMRC.

The First-tier Tribunal and the Upper Tribunal dismissed NHS Lothian's appeals. On appeal to the Inner House of the Court of Session, NHS Lothian argued, relying on the EU law principle of effectiveness, that the First-tier Tribunal had erred by refusing the claim in its entirety on the basis that the evidence available was insufficient to allow for proper quantification of the claim. The Inner House allowed the appeal, set aside the First-tier Tribunal's decision, and remitted the case to a differently constituted tribunal for reconsideration. HMRC now appeals to the Supreme Court.

Judgment appealed

[\[2020\] CSIH 14](#)

Parties

Appellant(s)

Commissioners for His Majesty's Revenue and Customs

Respondent(s)

NHS Lothian Health Board

Appeal

Justices

Lord Reed, Lord Briggs, Lord Sales, Lord Leggatt, Lady Rose

Hearing start date

8 June 2022

Hearing finish date

9 June 2022

Watch hearing

8 June 2022 [Morning session](#) [Afternoon session](#)

9 June 2022 [Morning session](#)

Judgment details**Judgment date**

19 October 2022

Neutral citation

[2022] UKSC 28