



[2019] UKFTT 636 (TC)

TC07412

*POCEDURE – strike out application – VAT input tax claim after relevant time limits
– ground of challenge on legitimate expectations – Tribunal’s jurisdiction – s 83 of
VATA 1994 – Rule 8 of the Tribunal Rules 2009 – application granted*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/00054

BETWEEN

DAVID JAMIESON

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE HEIDI POON

Sitting in public at Eagle Building, 215 Bothwell Street, Glasgow on 29 July 2019

Mr David Jamieson in person for the Appellant

**Mr Mark Boyle, litigator of HM Revenue and Customs’ Solicitor’s Office, for the
Respondents**

DECISION

INTRODUCTION

1. At the hearing on 29 July 2019, the Tribunal heard three matters brought by Mr Jamieson and HMRC as the respondents in relation to various sums of VAT in dispute. The first matter was an application by HMRC to strike out Mr Jamieson's appeal against HMRC's refusal decision to consider his input VAT claims that were made out of the applicable statutory time limits. The second matter concerned a VAT assessment for additional output VAT of £1,548.87, and the third matter concerned an assessment to claw back input VAT of £555.39.

THE SUMMARY DECISION

2. On 15 August 2019, the Tribunal issued a Summary Decision, whereby:

(1) HMRC's strike-out application against Mr Jamieson's appeal in relation to his input VAT claims totalling £18,587.63 was granted;

(2) The proceedings in relation to the other two matters under appeal, namely the VAT assessment in the sum of 1,548.87, and the claw back of input VAT claimed of £555.39, were stayed by Tribunal's Directions for HMRC to reconsider the matters, with the view that parties could reach an agreement without further recourse to the Tribunal.

3. By letter dated 9 September 2019, Mr Jamieson informed the Tribunal that he had accepted HMRC's letter of offer dated 21 August 2019 in relation to the second and third matters, and withdrew his appeal in relation to those parts of the proceedings.

4. In relation to the first matter, Mr Jamieson requested a full decision notice in order that he may apply for permission to appeal. This is the full decision notice, and concerns only the first matter of the proceedings, namely the strike-out application by HMRC.

RELEVANT LEGISLATION

5. The substantive matter concerning the strike-out application is in relation to the input tax credit claimed under sections 25 and 26 of the Value Added Tax Act 1994 ('VATA').

6. Section 83 of VATA provides a right of appeal against a range of matters covered by a Commissioners' decision, including the refusal decision as regards the input VAT claims in the present case.

7. The central issue in this strike-out application, however, is referential to the breach of the statutory time limits in bringing the input tax credit claims as provided under reg 29 of the VAT Regulations 1995, of which para 1A states as follows:

'Subject to paragraph (1B) the Commissioners shall not allow or direct a person to make any claim for deduction of input tax in terms such that the deduction would fall to be claimed more than 4 years after the date by which the return for the first prescribed accounting period in which he was entitled to claim that input tax in accordance with paragraph (1) above is required to be made.'

8. The time limit was formerly provided as 3 years, and with effect from 1 April 2009 the words '3 years' in the former enactment were substituted by '4 years' in para 1A pursuant to regs 2, 3 of the VAT (Amendment) Regulations, SI 2009/586, thereby extending the time limit to the current 4 years in force as applicable to input tax incurred from 1 April 2009.

9. For the purposes of the present appeal, some of the tax points were subject to the time limit of 3 years before the amendments which took effect from 1 April 2009.

10. Furthermore, the reason for the strike-out application is that the appellant's case, as pleaded in its notice of appeal to the Tribunal, discloses no legal basis on which its appeal can be considered by this Tribunal. Pursuant to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('Tribunal Rules'), the respondents apply for the appeal to be struck out under Rule 8(2)(a) on the basis that the Tribunal does not have jurisdiction to hear the appeal.

11. In the alternative, the Tribunal may strike out the whole or a part of the proceedings under Rule 8(3)(c) of the Tribunal Rules, if 'the Tribunal considers that there is no reasonable prospect of the appellant's case, or part of it, succeeding'.

THE FACTS

12. Mr Jamieson has been registered for VAT since 2 May 2000 and traded as 'Jamieson Paper Products'. His main business activity is to provide courier service for newspapers and office stationers.

13. The first matter concerns Mr Jamieson's retrospective claims for input VAT on purchases dating back to 2006 to 2011. The input tax on these purchases were claimed in the returns for periods 10/13, 01/14, 04/14, 07/15, 01/16, 07/16 and 10/16, and these retrospective claims have all been refused by the HMRC as being time-barred.

The substance of the input VAT claims

14. It is Mr Jamieson's position that, HMRC Officer Sullivan, who conducted the enquiry into Mr Jamieson's self-assessment returns for 2009-10 and 2010-11, 'instructed' him to make the input VAT claims on vehicles used in his business.

15. Mr Jamieson relied on a long letter received in 2011 from Mr Sullivan in respect of his self-assessment return check. Mr Jamieson said that Officer Sullivan 'did not impose a time limit on these necessary adjustments'. By that, Mr Jamieson referred to Officer Sullivan's short letter of 13 July 2011, in which the second (and last) paragraph states as follows:

'I will be writing to you again in connection with this self assessment check when I have considered the information and the records provided. The VAT amendments should be made through your (ie Jamieson Paper Products) VAT returns.'

16. There were 11 purchases of which Mr Jamieson said that he was 'instructed by HMRC' to make a claim for the input VAT borne. The bulk of his VAT claims under appeal was in relation to vehicles used in his business. Two transit vans and a caravan, purchased in April 2006, March 2008 and June 2008 respectively, had borne input VAT totalling circa £9,700, while two motor vehicles purchased in March 2007 and 2011 had borne VAT of around £6,000.

17. These items were included in Mr Jamieson's self-assessment returns as business expenses *net* of VAT, even though no input VAT had been recovered on them at the time. The normal rule is for a VAT-registered trader to exclude both input and output VAT when preparing accounts for income tax purposes under self-assessment. To that end, the exclusion of the VAT element in these purchases in the accounts for income tax purpose is correct, since the input VAT on eligible business expenses is recoverable, which means the input VAT is not part of business expenditure.

18. While these items of purchase would appear to be eligible for input VAT claim, HMRC have made no decision or submission in respect of their eligibility, and the Tribunal gives no judgment in this respect either.

The time limits applicable

19. For the respondents, Mr Boyle submitted that the time limit in every instance of these claims had long expired by the time Mr Jamieson made the claims. HMRC have provided a table listing the 11 items with their dates of purchase, the dates of the time limit of 3 or 4 years expiring, and the VAT return periods in which the claims were made. The table is not reproduced here, as parties are agreed that the time limit of 3 or 4 years is breached in each instance of the claims.

20. The following examples suffice to illustrate the extent of the breach:

(1) Transit van purchased in April 2006; the 3-year time limit expired with the return period 04/2009; claim was made in period 01/14;

(2) Transit van purchased in March 2008; the 3-year time limit expired with the return period 04/11; claim was made in period 10/13;

(3) Caravan purchased in June 2008; the 3-year time limit expired with return period 07/11; claim was made in period 04/14;

(4) Ford Fiesta purchased in March 2011; the 4-year time limit expired with the return period 04/15; claim was made in period 01/16;

(5) Mini Cooper purchased in March 2007; the 3-year time limit expired with the return period 04/10; claim was made in period 07/16.

21. In summary, the breach of the time limit ranged from 9 months (Ford Fiesta) at the minimum to 6 years and 3 months (Mini Cooper) at the maximum.

22. It is accepted that Mr Jamieson had omitted to make any claim on these sums of input VAT at the time of purchase.

Parties' positions

23. Mr Jamieson's ground of appeal is that he has a legitimate expectation that these claims would be entertained by HMRC because he was 'instructed' by an HMRC officer enquiring into his self-assessment returns to make the input tax credit claims.

24. From Mr Boyle's submissions, the grounds for applying to strike out this part of the appeal are summarised as follows:

(1) The Court of Appeal in *Leeds City Council v Revenue and Customs Comrs* [2015] EWCA Civ 1293 confirms the legality of HMRC's imposition of time limits in relation to VAT claims.

(2) The Tribunal has no jurisdiction to hear this part of the appeal, which must be struck out in accordance with Rule 8(2)(a) of the Tribunal Rules.

(3) In the alternative, the appellant's ground of appeal on legitimate expectations has no reasonable prospect and the Tribunal should strike it out under Rule 8(3)(c).

DISCUSSION

The purpose of time limits

25. In *Leeds City Council v Revenue and Customs Comrs* [2015] EWCA Civ 1293, the issue was the effectiveness of the imposition of time limits as regards VAT claims in domestic law in the context of legal principles under EU law. Delivering the Court of Appeal judgement in *Leeds*, Lewisham LJ summarised the issue at [26] as follows:

‘At bottom, therefore, it seems to me that in the first instance the dispute in our case boils down to a relatively narrow issue. Has Leeds been given a readily ascertainable prospective opportunity of a reasonable length within which to bring claims that it makes (assuming them to be well-founded in law)? If it has, then in the absence of special circumstances, none of the applicable principles of EU law will have been breached. If it has not, they will have been.’

26. In respect of the EU principle of equivalence, his Lordship made the following observations at [50]:

‘Whether domestic procedural rules for the enforcement of a person’s EU rights infringe the principles of equivalence or effectiveness is essentially a question of fact which, in this sphere, is particularly suitable for determination by a specialist tax tribunal, ... In our case the Upper Tribunal held that there was no breach of the principle of equivalence because the same time limit applied whether or not the claim for repayment of VAT was based on EU rights or domestic law....’

27. The domestic enactment of the primary statute under VATA and its secondary legislation has incorporated time limits for the purposes of legal certainty. Time limits are there so that the legal position as respects a claim by a trader or an assessment by HMRC can be readily ascertained at any point in time. If the time limit has lapsed in relation to the relevant event, the matter is considered closed, and neither party is entitled to re-open it.

28. With effect from 1 April 2009, the ordinary time limit of the VAT regime is four years, which applies equally to HMRC as to a trader. If HMRC discover an under-declaration by a trader four years after the relevant event, then HMRC are time-barred from raising an assessment (unless deliberate conduct or fraud was involved). If a trader discovers that a claim of input VAT was omitted at the time, he is similarly debarred from pursuing the claim after the applicable time limit.

29. A crucial function of the courts and tribunals is to uphold the time limits that have been set down by Parliament. Here the relevant time limit is set down in the statute, and is not a matter of judicial discretion. In other words, the Tribunal has no jurisdiction to consider whether the time limit can be varied, set aside, or extended.

30. Consequently, this part of Mr Jamieson’s appeal in relation to HMRC’s refusal of the late claims for input VAT is to be struck out, in accordance with Rule 8(3)(c), since all the claims were brought after the expiry of the relevant time limits as a matter of fact, and there is no reasonable prospect of the appeal succeeding therefore.

Legitimate expectations

31. As to Mr Jamieson’s challenge of HMRC’s decision to refuse the claim based on legitimate expectations, this is a challenge on ground of judicial review.

32. The jurisdiction for judicial review is reserved to the High Court (including the Upper Tribunal) and its appellate courts. The function of the court in judicial review proceedings is to review decisions of statutory and public authorities to see if they are lawful, rational and reached by a fair process. The normal grounds of challenge in a judicial review action include: (a) illegality (where a decision has involved an error/errors of law or fact), (b) irrationality (*Wednesbury* unreasonableness from the Court of Appeal precedent in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1KB 223), (c) procedural impropriety, (d) fettering of discretion, and (e) proportionality.

33. In *Revenue and Customs Comrs v Noor* [2013] UKUT 71 (TCC), the Upper Tribunal overturned the decision by the First-tier Tribunal ('FTT') which allowed the taxpayer's appeal. Mr Noor's claim of input tax on invoices in relation to services supplied to him more than six months before his effective date of registration was rejected by HMRC. Mr Noor's ground of appeal was to say that based on the advice he received from HMRC, he had a legitimate expectation that he would be entitled to claim the VAT shown on the invoices as input tax. The FTT hearing Mr Noor's appeal found that it had jurisdiction to consider the issue of legitimate expectation and concluded that the taxpayer had a right to payment of the VAT based on the alleged legitimate expectation.

34. HMRC appealed to the Upper Tribunal, on the ground that the FTT's jurisdiction under s 83(1)(c) of VATA was appellate and not supervisory, and therefore it was not open to the FTT to consider the taxpayer's claim on the public law concept of legitimate expectation.

35. Having considered *Oxfam v Revenue and Customs Comrs* [2009] EWHC 3078 (Ch), [2010] STC 686, and *Revenue and Customs Comrs v Hok Ltd* [2012] UKUT 363 (TC), [2013] STC 225, the Upper Tribunal in *Noor* held that:

(1) The FTT was created by the Tribunals, Courts and Enforcement Act 2007 and its jurisdiction is derived wholly from statute. It is plain from the 2007 Act that Parliament did not intend to confer a judicial review jurisdiction on the tribunal.

(2) Input tax is a creature of the statute under VATA, and the crediting of an amount of input tax is therefore a matter of statute, and the right to a credit arises only under the terms of the 1994 Act.

(3) The right of appeal provided under s 83(1)(c) is in respect of a person's right to a credit for input tax under the VAT legislation. The subject matter of an appeal under s 83(1)(c) is to be determined by applying the VAT legislation.

(4) It is also clear that s 83 of VATA does not confer a general supervisory jurisdiction on the tribunal, nor any provisions under VATA exist to confer such a jurisdiction in relation to the legitimate expectation.

(5) Accordingly, the tribunal does not have jurisdiction to adjudicate on the taxpayer's claim to a credit based on legitimate expectations.

36. The Upper Tribunal's decision in *Noor* is binding on this Tribunal. Insofar as Mr Jamieson has advanced his main challenge on legitimate expectations, this Tribunal has no jurisdiction to consider it, and *must* therefore strike out this part of the appeal in accordance with Rule 8(2)(a) of the Tribunal Rules.

37. In addition, the only reference I was taken to, namely the short letter from Officer Sullivan dated 13 July 2011, does not appear to disclose sufficient particulars to amount to being 'instructions' for the input VAT claims in question. The content of the letter makes no reference to either the substance of the claims, or to the time limit applicable to those claims.

38. In my judgment, it is highly unlikely that Mr Jamieson’s judicial review challenge would have been entertained by the relevant court either which has the jurisdiction. Putting aside the substantive issue underlying such a claim, a judicial review claim in this case would appear to be time-barred, and would be rejected at the first hurdle on procedural grounds.

DISPOSITION

39. For the reasons stated, the Tribunal allows HMRC’s application for striking out the appellant’s appeal against HMRC’s refusal decision in relation to the input tax credit claims.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

40. 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 HEIDI POON
TRIBUNAL JUDGE**

RELEASE DATE: 18 OCTOBER 2019