[2015] UKFTT 0460 (TC)

TC04628

Appeal number: TC/2014/05711

VAT – DIY Builders Scheme - Section 35 Value Added Tax Act 1994 - Inaccurate claim - Administrative error by Appellant's representatives - Incorrectly completed form sent by his accountants to the Appellant for signature - Adjustments made by HMRC - Penalty applied - Schedule 24 Finance Act 2007 - Whether the appellant took reasonable care to avoid the inaccuracy? - Yes - Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

SIMON COATES **Appellant**

- and -

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

TRIBUNAL: JUDGE DR CHRISTOPHER MCNALL
MR ALBAN HOLDEN

Sitting in public at City Exchange, 11 Albion Street, Leeds LS1 5ES on 17 April 2015, and with further written submissions (from the Respondent only) dated 24 July 2015.

Mr Paul Dixon of Winn & Co Chartered Accountants for the Appellant

Mrs Ann Sinclair, an Officer of HMRC, for the Respondents

DECISION

Introduction

1. This appeal concerns HMRC's decision to impose a penalty on Mr Coates pursuant to Schedule 24 of the Finance Act 2007, following the submission of an inaccurate VAT refund claim.

2. That claim was made under section 35 of the Value Added Tax Act 1994, which introduced a special VAT refund scheme for DIY new house builders and converters. That scheme puts DIY builders in a broadly similar position to a developer selling a zero-rated property. If claimed, HMRC must refund any VAT chargeable on the supply, acquisition or importation of goods used by the taxpayer in connection with the construction of a new, qualifying, dwelling.

The facts

3. On 12 May 2014, Mr Coates made a claim for £20,718.29 on Form VAT431NB ('VAT refunds for DIY housebuilders - Claim Form for New Houses'). This was in relation to his construction of a new house.

4. On 2 June 2014, HMRC confirmed that £11,612.07 of the claim would be allowed, but it disallowed £9,106.22, as detailed on an enclosed 'Schedule of Adjustments'.

5. Eight invoices were disallowed. For the most part, this was on the basis that the invoices from the suppliers to Mr Coates were "invalid as the goods/materials had been supplied and fitted or services had been provided in the course of construction of a new qualifying dwelling and no VAT should have been charged at all". The 'Reason Code' goes on to say: "Please be aware that HMRC cannot repay incorrectly charged VAT, your supplier(s) must correct it. HMRC cannot get involved."

6. At the foot of the Schedule of Adjustments is the following note:

> "All claims submitted for a DIY VAT refund which contain errors are considered for a penalty. If you have not received a Penalty Letter it has been decided on this occasion not to pursue a penalty and our records have been noted accordingly"

7. On that same day, 2 June 2014, HMRC wrote to Mr Coates. That letter is prominently headed "THIS IS A POTENTIAL PENALTY LETTER - PLEASE READ. Penalties for inaccuracies - Schedule 24 Finance Act 2007". It carries the same note at its foot. That letter sought further information. No point was taken before us as to whether the letter of 2 June 2014 was 'a Penalty Letter' or not and how, if at all, this married up with the text at the foot of the Schedule of Adjustments. For the purposes of this appeal, we treat that letter as 'a Penalty Letter' even though (a) it did not impose any penalty; (b) it stated (several times) that it was 'A Potential Penalty Letter'.

8. On 6 June 2014, Mr Coates' representatives wrote that the errors in the DIY claim:

> "... arose mainly due to staff holidays. All items were initially listed by a junior member of staff and these were then reviewed by someone who has experience of DIY claims and any items that were not eligible were deleted. Unfortunately when the final form was then completed, the incorrect version was used before being sent to Mr Coates for completion and this only came to light when we received a copy of the reply. We have spoken to Mr Coates and advised him of the error and he accepted the repayment of £11,612.07 and is obviously not appealing against the errors." (emphasis added)

9. On 26 June 2014, HMRC wrote that it intended to charge a penalty of £1,362.18, being equivalent to 15% of the Potential Loss Revenue ('PLR') on £9,081.22. The inaccuracies were treated as careless with prompted disclosure. 15% of PLR was the minimum penalty. Mr Coates was invited to provide *'any relevant information that we have not already taken into account which may affect our view ...'*. It was also said that none of the penalty could be suspended.

10. On 4 July 2014, Mr Coates' representatives wrote advising that the errors were due to an adminstrative error on their part, rather than a lack of knowledge of the claim being made. They also disagreed with the refusal to suspend.

11. On 5 August 2014, HMRC advised that, as the letter of 4 July 2014 was not considered to contain any further new information, a Notice of Penalty Assessment had been issued to Mr Coates.

12. On 15 August 2014, Mr Coates' representatives requested a review. They considered that this was *'a one-off error'* and complained that it was *'being dealt with in an officious manner'*. They continued to argue that any penalty should be suspended.

13. On 30 September 2014, HMRC, having conducted a review, upheld the decision in full.

14. The review letter stated:

> "In deciding that the penalty was 'careless' the officer has taken into account the fact that you work in the constructions industry. You are in fact a director of a construction company. I consider that your position in the construction industry gives you a reasonable understanding of the liabilities in the construction world and this, in conjunction with reading the declaration on the DIY form would have been sufficient to question the claim. The claim was 46% higher than it should have been, taking into account your abilities and circumstances it is reasonable to expect you to have checked the final claim. Your failure to have carried out the very basic of checks can only be considered careless"

15. The review letter went on to say that the penalty could not be suspended "*because we cannot identify a specific suspension that will help you avoid a further careless penalty*".

16. The Notice of Appeal is dated 21 October 2014. The Grounds of Appeal were that penalties had been charged on VAT which Mr Coates was not entitled to reclaim, and that the reason that VAT was shown on the invoices concerned was due to errors carried out by the suppliers and not by Mr Coates. The Grounds of Appeal went on to say:

> "The reviewer's conclusion on 30 September 2014 mentions that consideration has been made of the fact that Mr Coates works in the construction industry and that this would give a reasonable understanding of the liabilities concerned. This is not the case. Mr Coates' company operates as a subcontractor carrying out paving and surfacing works and bills all work at the standard rate to main contractors"

17. In the 'Speaking Notes' helpfully provided to the Tribunal by HMRC's representative, a number of submissions were made, including the following:

> "Mistakes do happen and the Respondents need to consider the particular person's abilities and circumstances, hence, the Appellant's directorship of a VAT-registered company which operates in the construction industry was taken into consideration. By assessing the person's abilities and circumstances, the Respondents then need to establish that the person has taken the care and attention that could be expected from a prudent and reasonable person"

Discussion

18. It was common ground that the return contained inaccuracy.

19. We must determine whether Mr Coates took 'reasonable care to avoid inaccuracy'. If he did, then he is not liable to a penalty: *Schedule 24 Paragraph 18*

20. We must ask what a reasonable taxpayer in the position of Mr Coates would have done in the circumstances.

21. We have derived assistance from the guidance offered by the Tribunal (Judge Cannan) in *Hanson v HMRC* [2012] UKFTT314 (TC), especially at Paragraphs [22]-[24].

22. Although the return was inaccurate we consider that Mr Coates did take reasonable care, and was not careless:

(1) Mr Coates is a subcontractor dealing in paving and surfacing works. He did not have any previous experience of claims under the DIY scheme;

(2) Mr Coates was not familiar with the principles applied by HMRC to these claims;

(3) Mr Coates put the matter in the hands of his accountants, and supplied them with the documents which they needed to complete the claim form;

(4) Mr Coates signed the form which was placed before him by his accountants, neither of them realising that it was in fact inaccurate;

(5) Mr Coates believed the form to be accurate, and signed the form in that belief. That belief was reasonable.

23. We are satisfied that Mr Coates, in taking the steps which he did, took reasonable care to avoid the inaccuracy. He saw the need for professional assistance with his claim and he sought it. He relied upon the work done for him, and it was reasonable for him to have done so. In our view, completion of the claim was a specialised and complex task. As far as Mr Coates was concerned, it was a 'one-off'. He had not done it before. The accountants were not acting as mere functionaries. Rather, they were being called upon to use their skill and knowledge of the DIY Scheme to process the invoices, applying the rules and Guidance Notes for the DIY Scheme so to complete the form correctly (noting that the Guidance Notes to VAT431NB are complicated and themselves come to 15 pages, which exceeds the 10 page form) and to present that form, once completed, to Mr Coates for his signature.

24. We accept that it was an administrative error on the part of Mr Coates' accountants that an incorrect version of the form was sent to Mr Coates for signature. In the circumstances, the presentation of the claim form by the accountants to Mr Coates was, in effect, a representation by them to him that it was correct, and could safely be signed by him as such. In our view, Mr Coates had no reason to doubt his accountants' competence or advice, and no reason to suppose that the form put before him had not been correctly completed.

25. We are satisfied that Mr Coates' conduct, as described above, was that of a reasonable and prudent taxpayer motivated by a desire to comply with his tax obligations.

Conclusion

26. Therefore, for the reasons set out above, we find as a fact that the appellant took reasonable care to avoid the inaccuracy.

27. In those circumstances, we cancel HMRC's decision to impose a penalty, and we allow the appeal.

28. Given our conclusion on the matter of the penalty, it is not necessary for us to consider the decision not to suspend.

29. 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: 16 SEPTEMBER 2015