TC04680

Appeal number: TC/2014/00356

VAT – Repayment claim – Whether submitted within four year time limit under s 80 Value Added Tax Act 1994 – No – Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

THE HOLLOWAYS **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN BROOKS
GILL HUNTER

Sitting in public at the Royal Courts of Justice, London on 7 April 2015

Bryn Fowler, Partner, The Holloways, for the Appellant

Mark Ratcliff of HM Revenue and Customs, for the Respondents

DECISION

1. The Holloways were a band (the "Band") which operated as a partnership and whose success led to their turnover exceeding the then VAT registration threshold in April 2007. They therefore were registered for VAT with effect from 1 June 2007 until their deregistration on 27 May 2012. Although VAT returns were submitted, albeit not always on time throughout 2008, no VAT returns were submitted during 2009 and it is the VAT return for the Band's VAT accounting period ended 28 February 2009 (02/09) with which this appeal is concerned.

2. As the 02/09 VAT return, which was required to be submitted by 31 March 2009, had not been received, HM Revenue and Customs ("HMRC") issued the Band with an assessment, made under s 73 of the Value Added Tax Act 1994 ("VATA"), on 17 April 2009 in the sum of £7,875.00.

3. Mr Bryn Fowler, a partner and member of the Band, who appeared before us, explained that as musicians the band spent much of their time away from home and, as such, relied heavily and trusted their accountant, Victoria Shuttleworth, to ensure compliance with their tax and VAT obligations. He was told by Ms Shuttleworth that the each of the Band's 2009 VAT returns had been filed by their respective due dates.

4. In October 2011, having discovered the 2009 VAT returns had not been filed, Mr Fowler instructed Ms Shuttleworth to calculate the Band's 2009 VAT liability and submit the outstanding VAT returns. Having calculated a liability of £9,247.30 a payment of £8,154.00 was made to HMRC on 27 October 2011. This was as much as the Band could afford at the time. However, despite her assurances that the 2009 VAT returns had been filed Ms Shuttleworth had not submitted them to HMRC.

5. Mr Fowler, who told us he genuinely believed the 2009 VAT returns to have been submitted, continued to receive correspondence from HMRC in relation to these returns as is apparent from the following exchange of emails between him and Ms Shuttleworth on 11 March 2013:

> Hello Vick
>
> As you can see I have had another nonsense bill from the VAT people.
>
> I have spoken to them on the phone and they say it is all from the unfiled 2009 returns.
>
> I would like you to:
>
> 1. Deal with the letter by telling them when the returns were sent in so they can track them. Or resend the returns in.
>
> 2. Send me the dates the returns were sent in so if they send me another letter I can deal more efficiently with it.
>
> 3. If you can't deal with the letter quickly can I have access to our files so that I can get it dealt with.

> Please advise me of what you are going to and what you manage to do. The VAT people are saying that it will go to debt collectors and then court if we don't pay them soon.
>
> Thanks
>
> Bryn Fowler

Ms Shuttleworth replied:

> Hi Bryn
>
> This is silly. I will resubmit the returns – I'll pop down to storage and retrieve the files. It must get resolved by the end of the month because it's ridiculous that this drags on. Let's get it done shall we!
>
> V

6. On 7 June 2013 Ms Shuttleworth electronically submitted all of the Band's 2009 VAT returns to HMRC. The 02/09 return showed a liability of £893.20, considerably less than HMRC's estimated assessment of £7,875.00 for the same period.

7. Having received the 02/09 VAT return HMRC wrote to the Band on 14 June 2013 in the following terms:

> On 17/04/09 you were sent an assessment of Value Added Tax in the amount of £7875.00 as your VAT Return for the period 02/09 had not been received by the deadline.
>
> We have now received your VAT return for the period 02/09 declaring VAT of £893.20.
>
> Whilst his amount may be less than the assessment, we can not (sic) credit the overpayment of £6981.80 to your account or make a repayment because the time limits (sic) set down in law for repayment has now passed. The law, (section 80(4) VAT Act 1994) says that HMRC are not liable to credit or repay any amount where we receive a claim more than four years after the end of the accounting period in which the assessment was made.

8. Section 80 VATA, to which HMRC's letter refers, (insofar as applicable to the present case) provides:

> (1A) Where the Commissioners–
>
> (a) have assessed a person to VAT for a prescribed accounting period (whenever ended), and
>
> (b) in doing so, have brought into account as output tax an amount that was not output tax due,
>
> they shall be liable to credit the person with that amount.
>
> ...
>
> (2) The Commissioners shall only be liable to credit or repay an amount under this section on a claim being made for the purpose.

...

(4) The Commissioners shall not be liable on a claim under this section–

(a) to credit an amount to a person under subsection ... (1A) above, or

(b) ... ,

if the claim is made more than 4 years after the relevant date.

(4ZA) The relevant date is–

...

(d) in the case of a claim by virtue of subsection (1A) above ..., the end of the prescribed accounting period in which the assessment was made;

....

...

(6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.

(7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.

9. This section was considered by Judge Sadler in *Beds Beds Beds London Ltd v HMRC* [2012] UKFTT 353 (TC) which, like the present case, concerned a claim for repayment made over four years after an estimated assessment which exceeded the actual VAT liability.

10. In reaching his conclusion Judge Sadler said:

"16. The position in law as it applies to this case is quite clear. The Commissioners, by the automated assessment made on 11 August 2006, assessed the Appellant to VAT for the accounting period 06/06 and in doing so brought into account as output tax an amount, £4,772.05, that was not, as it transpired, output tax. Under section 80(1A) VATA 1994 they are liable to credit the Appellant with that amount, but only if the Appellant makes a claim to the Commissioners in the form required by them (see section 80(2) and (6) VATA 1994).

17. However, the Commissioners are not liable to credit the Appellant with the amount of overpaid VAT if the claim made under section 80(2) VATA 1994 is made more than four years after the relevant date (see section 80(4) VATA 1994). In the Appellant's case, because the assessment which gave rise to the overpaid tax was made in the Appellant's VAT accounting period 09/06, the relevant date is four years after 30 September 2006, that is, 30 September 2010 (see section 80(4ZA)(d) VATA 1994). The Appellant's claim (which took the form of its VAT return for the 06/06 period) was made on 12 April 2011, and therefore was made more than four years after the relevant date.

> 18. It is therefore the case that the Commissioners are not liable to repay the overpaid VAT to the Appellant, and their decision refusing to make such repayment is correct. The terms of section 80 VATA 1994 are clear and explicit, and they alone determine whether or not a repayment can be made, as section 80(7) VATA 1994 makes clear. No discretion is given by the statute to the Commissioners to vary this rule to allow them to repay overpaid VAT if a claim is made after the four year period, however deserving a taxpayer's case may be. Unlike certain other instances in the VAT legislation where a taxpayer has failed to comply with a time limit, in the case of a claim for overpaid VAT under section 80 VATA 1994 there is no provision which allows the Tribunal to step in to decide that there is a reasonable excuse for the taxpayer's failure to take action so that the time limit can be set aside.
>
> 19. The four year limitation period, in such absolute terms, is enacted to provide legal certainty: there has to be a point of cut off or finality beyond which a claim, whatever the circumstances, cannot be acted upon or enforced in law. Such limitation periods apply not only in the field of tax law, but across every field of law in one form or another, and for varying periods. With regard to the four year period applicable in this particular case, it is well-established in law that it is reasonable to have such a point of finality, and that four years is a reasonable period within which a claim for repayment of overpaid VAT must be made before the claim is time-barred. The Appellant cannot therefore challenge the limitation period on the grounds that it is contrary to fundamental legal principles.
>
> 20. For these reasons the Appellant's appeal fails and has to be dismissed.

11. We agree with Judge Sadler's analysis of s 80 VATA and, given the 02/09 VAT return in the present case was not received by HMRC within four years of the estimated assessment, are therefore compelled to reach the same conclusion as he did in that case.

12. That said, we do appreciate that the Band would have been in a better position if the payment of £8,154 had not been made to HMRC on 27 October 2011 as the effect of s 80 is to prevent any credit being given for the difference of £6,981.80 between the estimated assessment and actual VAT liability for 02/09. We also recognise Mr Fowler's concerns that he had not been made aware of the s 80 VATA time limit during his dealings with HMRC or by Ms Shuttleworth.

13. However, as Judge Sadler said at [21] in *Beds Beds Beds*:

> "… the Appellant's real grievance is that it was not notified that there was a four year limitation period in which it had to submit its 06/06 return or otherwise make a claim for the overpaid tax assessed in the automated assessment. This is a matter which the Appellant is pursuing with the Complaints unit of the Commissioners. It is not a matter for the Tribunal as it is not a question of law - there is no requirement in law that the Commissioners should notify taxpayers of

> limitation periods or of the consequence of failing to act within such periods."

This must be right as it is clear from the decision of the Tax and Chancery Chamber of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363(TC), which is binding on us, that the jurisdiction of this Tribunal, the Tax Chamber of the First-tier Tribunal, does not extend to the power to override a statute or supervise the conduct of HMRC.

14. Finally we should say that we found Mr Fowler's account of events leading to this appeal to wholly credible and we fully accept that he believed what he was told by Ms Shuttleworth. This is clear from the email exchange between them that we have quoted at paragraph 5, above. He also told us that Ms Shuttleworth had originally agreed to give evidence on behalf of the Band before us. Indeed her name was included as a witness in Mr Fowler's email to the Tribunal of 17 July 2014. However, by 1 September 2014 in a subsequent email to the Tribunal, Mr Fowler, in relation to the provision of a witness statement from Ms Shuttleworth explained that he was "having some issues getting it out of Vick".

15. In the circumstances, Ms Shuttleworth's reluctance to give evidence on behalf of her client is perhaps not all that surprising in that, had she filed the 2009 VAT returns when she told Mr Fowler that she had, the members of the Band would not have found themselves in their current position.

16. However, for the above reasons we have no alternative but to dismiss the appeal.

17. 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.

JOHN BROOKS

TRIBUNAL JUDGE
RELEASE DATE: 25 April 2015