



TC06398

Appeal number: TC/2015/07066

VAT – STRIKE OUT – failure to comply with an unless order – grounds of appeal not within the jurisdiction of the tribunal – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SCREAM WHOLESALE LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE AMANDA BROWN
TERRY BAYLISS**

Sitting in public at Centre City, 5 – 7 Hill Street, Birmingham on 1 March 2018.

Mr Sembi of FRP Advisory LLP for the Appellant

Miss A Sinclair, presenting officer, for the Respondents

DECISION on PRELIMINARY ISSUE

1. This appeal concerns assessments issued by HM Revenue & Customs (“the Respondents”) to Scream Wholesale Ltd (“the Appellant”) in respect of periods 05/12 – 11/14, 05/15 and 08/15 totalling £672,710.07. The assessments were raised in respect of a number of errors. By far the most significant in terms of quantum was the failure of the Appellant to account for VAT at the standard rate on sales of motor homes. The Appellant contended that the motor homes in question had been adapted and supplied to handicapped persons for domestic or personal use and were therefore liable to be taxed at the zero rate.

Chronology of appeal

2. The appeal was lodged on 8 December 2015 within the relevant statutory time limits for the appeal. The grounds of appeal were:

“We, as individuals, have supplied motor homes to the general public for 17 years. Scream Wholesale Ltd was formed in 2010 and we have continued to supply motor homes through this company.

This appeal is against an assessment made by HMRC to disallow the administration of the zero rating of motor homes supplied to disabled customers, HMRC seems to be (sic) guided by a “lack of evidence” supplied by ourselves in the administration of this scheme. Our say is that we have always acted on advice of numerous HMRC officers over the years who have accepted, in the past that we have administered this scheme correctly.

HMRC Guidance Notes or Public Notices do not mention any requirement of the said evidence and only states we have to “satisfied” (sic) that the declaration made is just one.

If we had been asked to retain evidence in regards to adaptations made etc. we would of (sic) kept a record of such matters.

I have asked on many occasions that HMRC furnish me in writing with the exact requirements of how this scheme should be administered, but nothing has been forthcoming.

In summary, past HMRC (sic) who have checked our records have accepted them to be sufficient in regards to this scheme. There has been no legislative changes that would alter this, so why are we now in the wrong?

HMRC now claim £672,707.07 in the ir assessment going back to 2012 directly linked to this scheme, where as we have administered this correctly, the figure is actually £254,453.37 which is due to us”.

3. On 15 February 2016 the Respondents applied for a stay of all time limits for a period of 6 months. The Appellant objected to the application and by direction dated 14 June 2016 the application was refused.
4. The Respondents served their statement of case on 28 June 2016. By their statement of case HMRC asserted that the grounds of appeal did not represent matters over which the Tribunal had jurisdiction as the grounds were more properly to be treated as complaints or challenges to the approach of HMRC more properly subject to an administrative law challenge by way of judicial review. The Respondents contended that the appeal should be struck out on this basis.
5. The statement of case was not treated as an application for strike out by the Tribunal.
6. Directions as to the conduct of the appeal were issued on 12 July 2016. At that time there was no direction concerning the service of witness statements.
7. Both parties complied with the directions of 12 July 2016. The Appellant notified an intention to rely on 4 witnesses.
8. By application dated 26 August 2016 the Respondents applied for a direction that both parties be required to serve witness statements of those persons which they intended to call as witnesses. The application was served on the Appellant on 7 September 2016 giving them 7 days in which to object to the direction. It was followed up on 19 September 2016.
9. The Respondent served their witness statements on 27 September 2016.
10. On 11 October 2016 the Respondents sought a direction that having failed to serve witness statements the Appellant should be precluded from calling the witnesses.
11. By direction dated 12 November 2016 the Appellants were directed to provide witness statements by 28 November 2016 and that both parties provide revised listing information by 12 December 2016. The terms of the direction did not provide that the Appellant be precluded from relying on oral evidence if it failed to serve the witness statements.
12. The Respondents served a further application on 12 December 2016 in consequence of the Appellant's failure to comply with the direction requiring service of the witness statements. At that time the Respondents had become aware that the director of the Appellant had passed away. The Respondents invited the Tribunal to amend the time limits provided for in the direction of 12 November 2016. The Appellant was invited to update the Tribunal by letter dated 14 January 2017.
13. On 11 February 2017 the Respondents again made an application to the Tribunal that the Appellant be barred from adducing evidence or that the appeal be struck out for failure to comply with directions and to progress the appeal.

14. On 18 March 2017 the Tribunal directed that unless, by 3 April 2017, the Appellant (1) confirm in writing to the Tribunal that it intended to proceed with the appeal and (2) complied with the direction to serve witness statements the appeal may be struck out without further reference to the parties.
- 5 15. The Appellant company went into liquidation on 17 March 2017. The Respondents informed the Tribunal and invited consideration as to whether it was appropriate to amend the directions dated 18 March 2016.
- 10 16. The Respondents contacted the liquidator by email dated 4 April 2017 inviting them to notify the Tribunal of their intentions in relation to the appeal. A copy of the statement of case was provided at that time.
17. On 6 May 2017 the Tribunal amended the direction of 18 March 2017 requiring compliance by 22 May 2017.
18. By email dated 18 May 2017 the liquidator applied for a further extension of time for compliance to 31 July 2017 which was granted by the Tribunal.
- 15 19. On 20 July 2017 a further extension was sought by the liquidators. By email dated 26 July 2017 they specified that a direction to 25 August 2017 was requested. This application too was granted. All correspondence, including a copy of all documents on the Appellants' list of documents was provided to the liquidator on 9 August 2017 as requested by them.
- 20 20. By letter dated 21 August 2017 the liquidator confirmed that the Appellant intended to maintain the appeal and indicated that "all relevant information" would be forwarded to the Tribunal. The Appellant thereby complied with the first part of the unless order but not the second. By email dated 31 August 2017 the Tribunal sought the information promised.
- 25 21. On 7 September 2017 the liquidator notified the Tribunal that it had appointed DJH Accountants Limited and Neil Taylor (the Appellant company's general manager) to assist the liquidator. It promised to progress the matter "shortly".
22. On 12 September 2017 the liquidator sought clarification as to the information sought. Following which the Tribunal listed the matter for hearing.
- 30 23. On 8 February 2018 the liquidator contacted the Tribunal stating "I understand that we need to submit a witness statement and evidence prior to the tribunal date. However, I have not received any correspondence advising of the deadline for this. I should therefore be grateful if you could advise when this has to be submitted." By reference to the Tribunal file this statement was incorrect. The unless order issued by
35 the Tribunal to the business premises on 6 May 2017 was provided by HMRC to the liquidators on 10 May 2017. By email dated 18 May 2017 the liquidator acknowledging the obligation to provide information by 22 May 2017 and sought an extension of time.

24. By letter dated 14 February 2018 the Tribunal informing the liquidator that the time had long passed and that the Tribunal were unlikely to accept late evidence but inviting any application the liquidator wished to make.

5 25. On 28 February 2018 the liquidator sought a postponement of the hearing. The grounds given were that Mr Taylor was unavailable to appear and represent the Appellant due to being unwell. Further it was asserted that the Appellant had been unable to comply with the original direction to produce witness statements due to the death of the director and that the liquidators had been unaware of the requirement to do so. As indicated by the chronology the latter assertion by the liquidator is patently
10 incorrect and untruthful.

26. The Tribunal refused the application which was renewed at the hearing.

Postponement

15 27. The Appellant's representative was unable to provide any support for the application to postpone on the grounds of Mr Taylor's ill health. Given that Mr Taylor was not the appointed representative and only an employee of the company prior to the liquidation and that the liquidators were represented the Tribunal determined to proceed to consider whether the appeal should be struck out.

Strike out

20 28. The Tribunal invited the Appellant's representative to provide any explanation for the failure to comply with the unless order. The representative was unable to do so.

29. The Respondents renewed their application for strike out.

25 30. The Tribunal considers that there has been a clear and persistent failure to comply with the direction of the Tribunal that witness statements be produced. By their listing information provided in July 2016 the Appellant notified of its intention to rely on witnesses but persistently failed to provide the statements. The liquidator clearly made no attempt to comply.

30 31. Further, and in addition, the grounds of appeal do, on their face, appear to raise a defence to the assessment predicated on an assertion that they had never been assessed before and that HMRC, by visiting, had acquiesced to the procedures adopted by the Appellant. The grounds did not assert that the Appellant had further evidence as to the nature of the adaptations made on each motor home (though it was asserted they were all the same, the addition of a grab handle) or that the purchasers were handicapped for the purposes of the zero rating provision.

35 32. By reference to the Upper Tribunal judgement in the case of *Abdul Noor [2013] UKUT 071* it is clear that the Tribunal does not have jurisdiction to consider whether through their actions the Respondents had created a legitimate expectation that assessments would not be raised.

33. In light of the failure to comply with an unless order and coupled with the fact that the grounds of appeal did not raise any basis on which the Tribunal had the jurisdiction to consider the appeal the Tribunal has determined that the appeal be struck out.

5 34. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary 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.

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**AMANDA BROWN
TRIBUNAL JUDGE**

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RELEASE DATE: 19 MARCH 2018