Neutral Citation: [2024] UKFTT 00715 (TC)

Case Number: TC09255

FIRST-TIER TRIBUNAL
TAX CHAMBER

Held at Taylor House

Appeal reference: TC/2022/01404

Value Added Tax – Output tax – whether supply qualifies for zero-rating under Schedule 8 Group 12 to the Value Added Tax Act 1994 - no - appeal dismissed.

Heard on: 23 and 24 April 2024
Judgment date: 1 August 2024

Before

TRIBUNAL JUDGE KELVAN SWINNERTON
MEMBER MR JOHN AGBOOLA

Between

MARK GLENN LTD

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ms R Sheldon, counsel (instructed by Croner-i).

For the Respondents: Ms F Ameerally, litigator of HM Revenue and Customs' Solicitor's Office.

DECISION

INTRODUCTION

1. The Appellant appeals against a VAT assessment issued for £165,821 for allegedly underdeclared output tax in respect of the VAT periods 01/18 to 04/21 (both periods inclusive).

2. The Appellant appeals also against Notices of Amendment to a number of VAT returns for the VAT periods from 07/21 to 04/23 (both periods inclusive) in the total amount of £76,814.10.

3. Additionally, the Appellant appeals against not yet adjusted VAT returns for the VAT periods 07/23 to 01/24 (both periods inclusive) in the amount of £34,448.

4. The amounts detailed above are agreed between the parties and were provided to us in a spreadsheet subsequent to the hearing.

5. The total amount under appeal as agreed between the parties for the VAT periods detailed above is the sum of £277.083.10.

THE HEARING AND EVIDENCE

6. We considered all of the documentation provided which comprised of an authorities bundle of 311 pages and a hearing bundle of 1557 pages which included, amongst other documents, various Notices of Appeal and a Consolidated Statement of Case of the Respondents dated 15 June 2023. We heard evidence from Mr Glenn Kinsey (of the Appellant) who adopted his witness statement of 28 July 2023. Officer John Edward Gibbard of the Respondents adopted his witness statement dated 27 July 2023. No questions were asked of Mr Gibbard. Both parties also provided skeleton arguments.

BACKGROUND

7. In about 1995, Mr Mark Sharp was working as a hair extension technician with his then wife. They had a business named Attention X Ltd.

8. Mr Sharp created a system for hair loss which he named after his friend, Mr Glenn Kinsey. That system, which is fundamental to this appeal, is called the Kinsey System ("the Kinsey System") and is explained in detail later in this decision.

9. In 2001, Mr Sharp and Mr Kinsey co-founded Mark Glenn Ltd ("the Appellant").

10. The Appellant was incorporated on 12 July 2001 and started trading from premises in London.

11. The directors of the Appellant are Mr Kinsey and Mr Sharp.

12. The Appellant was registered for VAT from 12 July 2001.

13. The nature of trade is noted as: "*Hair extensions. Medical Treatments for folicularly challenged* " [sic].

14. The letter (by facsimile) of 25 October 2001from Ms P Rickerby (of Ashley Doggett & Co) to the Appellant refers to advice obtained on behalf of the Appellant and states: "*I enclose a copy of the completed enquiry and our VAT experts reply. As you will see he gives two examples and he feels the best path for you to go down is the second one. Things have changed since he advised us on Attention X and he advises us that providing services for the sick and disabled and providing you get them to sign a copy of the document it will be zero rated. The scope is greater with this option rather than the other whether it had to be supplied through the National Health Service*…".

15. The advice referred to above from the VAT experts (VAT Advice & Training Services Limited) also dated 25 October 2001, states: "*For zero-rating to apply under the dispensing provisions referred to in my previous letter, two conditions have to be met: a medical practitioner has prescribed the treatment and payment is made under regulation 20 of the National Health Service (Pharmaceutical Services) Regulations 1992…There is another possibility that zero-rating could be available using the legislation for aids to the handicapped. The definition of handicapped is a person who is chronically sick or disabled. The notes to the relevant legislation state that a medical appliance includes wigs*".

16. A number of years later, on 16 April 2020, a compliance check was opened by HMRC.

17. On 9 August 2020, Mr Glenn Kinsey responded with the provision of information to HMRC.

18. On 18 August 2020, HMRC sought additional information from the Appellant including as to whether or not any of the staff of the Appellant were medical practitioners.

19. On 5 September 2020, Mr Glenn Kinsey responded to HMRC confirming that none of the staff of the Appellant were medical practitioners but that referrals were received from medical practitioners with the NHS sometimes paying for the service provided by the Appellant.

20. On 25 November 2020 and 3 December 2020, additional information was requested which was provided on 7 December 2020 by the Appellant to HMRC.

21. On 21 September 2021, Officer Gibbard wrote to the Appellant advising that hairweaving cannot be included as zero-rated for VAT purposes under VAT Group 12.

22. On 28 October 2021, Officer Gibbard confirmed that zero-rating ruling.

23. On 17 December 2021, the Appellant requested a review of HMRC's decision.

24. On 25 January 2022, HMRC issued a review conclusion letter upholding its decision. It was accepted by HMRC that previous HMRC correspondence incorrectly referred to the process as a 'hair weave' but HMRC confirmed that the ruling had been given on the basis of the actual process being undertaken by the Appellant.

25. On 22 February 2022, the Appellant made an initial appeal in respect of the assessment relating to the VAT periods 01/18 to 04/21 and the Notice of Amendment to the 07/21 return.

26. Subsequent appeals were made in respect of other VAT returns with the appeals being consolidated.

THE LAW

27. The relevant provisions derive from the Value Added Tax Act 1994 ("VATA94").

28. Section 30 (Zero-rating) of VATA94 states:

"(1) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section-

(a) no VAT shall be charged on the supply;

(b) *it shall in all other aspects be treated as a taxable supply;*

and accordingly the rate at which VAT is treated as charged on the supply shall be nil.

(2) A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description for the time being specified in Schedule 8 or the supply is of a description for the time being so specified".

29. Schedule 8, Group 12 (Drugs, medicines, aids for the [disabled,] etc) of VATA94 states:

"*2. The supply to a disabled person for domestic or his personal use, or to a charity for making available to disabled persons by sale or otherwise, for domestic or their personal use, of-*

(a) medical or surgical appliances designed solely for the relief of a severe abnormality or severe injury;

...

(g) equipment and appliances not included in paragraphs (a) to (f) above designed solely for use by a disabled person

(h) parts and accessories designed solely for use in or with goods described in paragraphs (a) to (g) above;

...

3. The supply to a disabled person of services of adapting goods to suit his condition.

...

5. The supply to a disabled person or to a charity of a service of repair or maintenance of any goods specified in item 2, 2A, 6, 18 or 19 and supplied as described in that item.

<u>Notes</u>

(3) Any person who is chronically sick or disabled is "disabled" for the purposes of this Group.

(4) Item 2 shall not include aids (except hearing aids designed for auditory training of deaf children), dentures, spectacles and contact lenses but shall be deemed to include –
(a) clothing, footwear and wigs".

30. VAT Notice 701/7 (Reliefs from VAT for disabled and older people) states as follows:

"*3.2.1 What 'chronically sick or disabled' means*

A person is 'chronically sick or disabled' if they are a person with a:

physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out everyday activities

condition which the medical profession treats as a chronic sickness, such as diabetes.

It does not include an elderly person who is not disabled or chronically sick or any person who's only temporarily disabled or incapacitated, such as with a broken limb".

THE ISSUE

31. The sole issue in dispute between the parties is whether the Appellant's supply known as the Kinsey System qualifies for zero-rating under Schedule 8 Group 12 to VATA94 or whether the supply is standard-rated for VAT purposes.

DISCUSSION

Is the Kinsey System a taxable supply of a good or a taxable supply of a service?

32. The skeleton argument of the Appellant submitted, in the first instance, that Item 3 of Schedule 8 was met in that there is a supply to a disabled person of services of adapting goods to suit his condition. It was stated that there "*is a supply of services adapting the individual fibres into the mesh to specifically address the individual hair loss suffered, which is unique to each client's hair loss. This includes a team of 2 people individually working to thread the fibres together ...*".

33. Alternatively, it was submitted in the skeleton argument of the Appellant that Item 2(g) of Schedule 8 is met if it is determined that there has been a supply of a good or alternatively, that Item 2(a) is met. Item 2(g) relates to equipment and appliances (not included in paragraphs (a) to (f) of Item 2) designed solely for use by a disabled person. Item 2(a) relates to medical or surgical appliances designed solely for the relief of a severe abnormality or severe injury.

34. It was submitted also that Item 5 applies to the maintenance appointments every six weeks that form part of the Kinsey System, as this is the supply '*to a disabled person …of a service of repair or maintenance of any goods specified in item 2*'.

35. The skeleton argument of the Respondents avers that the Kinsey System is a service provided by the Appellant to their customers. It is stated that the principal service is "*one of installing and assembling the silk wig mask onto the client's head. The mask cannot be purchased separately and cannot be installed without the expertise of the "hair angels" employed by the Appellant. The service is also one of continuing obligation as the clients are expected to return every 6-weeks or so for the wig to be inspected and re-attached due to the wig growing away from the scalp*". It was also asserted by the Respondents that the Kinsey System is a single supply of a service and that the Appellant's service is not one of adaptation, repair or maintenance of goods for disabled persons.

36. At the hearing, it was agreed by the parties at the point of submissions that the Kinsey System is the supply of a service and not the supply of a good.

37. At the hearing, we were shown two videos provided by the Appellant. One video, entitled 'Caroline's Story', demonstrated the Kinsey System. The other video, entitled 'The Hair of My Dreams', demonstrated the hair extension product of the Appellant. The Appellant accepts that its hair extension offering is standard-rated for VAT purposes.

38. The witness statement of Mr Kinsey details the client journey involved with the Kinsey System. It starts with a consultation in-person at the London studio of the Appellant ('the Consultation'). If the client is suitable, the procedure and pricing is explained to the client. The next part of the client journey involves a swatch of colour-matched hair for the client being sent to the wigmaker of the Appellant to manufacture the initial wig ('Wigmaker Pre-Preparation'). This is a custom-made wig.

39. The following part of the client journey ('Fitting and Adaptation of the Wig') is when the wig is placed over the area of hair loss alongside additional wig mesh where necessary. It is stated (at paragraphs 38 and 39 of Mr Kinsey's statement) that: "*Any existing strands of human hair underneath the mesh are pulled through the mesh using a crotchet needle. The wig then sits in place like a "second skin" with native hair poking through the mesh alongside the wig hair. The wig is held in place at various anchor points using baby-fine connections whereby human hair surrounding the loss is attached to colour-matched fibre hair using a four-stem braid technique. Whilst a traditional adhesive could be used, this technique means that healthy hair doesn't need to be shaved or hidden away and is instead integrated into the style*".

40. Additionally, it is stated that where necessary the wig is then adapted by filling it out with additional fibre hair that is attached to the mesh itself using a needle. The statement of Mr Kinsey details that: "*In this instance, we're effectively turning "half a wig" into a full wig by the addition of more colour-matched hair*". The hair is then styled and cut to complete the look and the client typically returns every 6 weeks for maintenance of the system which involves re-attachment of the wig mesh and any ongoing styling necessary. It is stated that without this maintenance of re-anchoring, the mesh would become loose and put stress on the existing stable hair causing breakage.

41. It is clear to us that the Kinsey System consists of several parts which are all connected. The 'Fitting and Adaptation of the Wig' part of the Kinsey System takes two people working at the same time approximately 8 hours to complete after which there is a process of ongoing maintenance that takes place every 6 weeks where significant input from the Appellant's staff is again required. The typical cost to the client of the Kinsey System is approximately £2389 which excludes the maintenance cost every 6 weeks. The maintenance cost, in total, amounts to in the region of £2400 annually. We agree with the parties and find that the Kinsey System is the supply of a service and not the supply of a good.

Does the Kinsey System qualify for zero-rating under Schedule 8 Group 12 to VATA94?

42. It is not in dispute between the parties that the zero-rating provisions are derogations from the general principle that supplies of goods and services are taxable and that the provisions should be interpreted strictly. In that respect, we were referred to the case of *Talacre Beach Caravan Sales Ltd v HMRC [2006] STC 1671 (at paragraph 23)* which states: "*…as the Court has pointed out on a number of occasions, the provisions of the Sixth Directive laying down exceptions to the general principle that VAT is to be levied on all goods or services supplied for consideration by a taxable person are to be interpreted strictly*".

43. Ms Sheldon for the Appellant made the point, which we accept, that a strict interpretation is not the same as a restrictive interpretation as was held in the case of *Lanyst Limited v HMRC [2016] UKFTT 0372 (TC)*.

44. In *the case of Lanyst*, it was stated (at paragraph 19) that: "*A strict interpretation is not the same as a restrictive interpretation. As Chadwick LJ said in Expert Witness Institute v Customs and Excise Comrs [2002] STC at [17] (and endorsed by the Court of Appeal in InsuranceWide.com Services Ltd v Revenue and Customs Comrs, Revenue and Customs Comrs v Trader Media Group Ltd [2010] STC 1572 at [83]:*
"A "strict" construction is not to be equated, in this context, with a restricted construction. The court must recognise that it is for a supplier, whose supplies would otherwise be taxable, to establish that it comes within the exemption, so that if the court is left in doubt whether a fair interpretation of the words of the exemption covers the supplies in question, the claim to the exemption must be rejected. But the court is not required to reject a claim which does come within a fair interpretation of the words of the exemption because there is another, more restricted, meaning of the words which would exclude the supplies in question".

The meaning of 'a disabled person'

45. For Item 3 of Schedule 8 to be met, the supply must be one to a disabled person of services of adapting goods to suit his condition.

46. Turning to a consideration of the meaning of 'disabled person', the Notes to Schedule 8 state that: "*Any person who is chronically sick or disabled is "disabled" for the purpose of this Group*".

47. VAT Notice 701/7 (which is HMRC Guidance) states, as referred to above, that a person is 'chronically sick or disabled' "*if they are a person with a:*

- *physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out everyday activities*
- *condition which the medical profession treats as a chronic sickness, such as diabetes…."*

48. We were referred also to the definition of a disability in section 6 of the Equality Act 2010 which states:

(1) "*A person (P) has a disability if-*

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) *A reference to a disabled person is a reference to a person who has a disability*".

49. The Equality Act 2010 replaced the Disability Discrimination Act 1995 as well as several pieces of legislation covering discrimination.

50. Comparing the wording in VAT Notice 701/7 (at 3.2.1) to that in section 6 of the Equality Act 2010, the wording is very similar. VAT Notice 701/7 refers to the 'ability to carry out everyday activities' whereas section 6 of the Equality Act 2010 refers to the 'ability to carry out normal day-to-day activities'. We do not consider that there is any material difference between the wordings in that respect.

51. The Appellant submits, in relation to what constitutes a disability, that significant hair loss in women should be considered as a disability in itself. The skeleton argument of the Appellant states (at paragraph 38): "*That significant hair loss should be treated in and of itself as a disability for these purposes, i.e. because it is a physical impairment which has a long-term impact and substantial adverse effect on the ability to carry out everyday activities…*". We were referred to the evidence of Mr Kinsey at the hearing who stated that hair loss effects women's lives in so many ways and that it impacted every area of their lives. Mr Kinsey also referred several times in his witness statement to 'disabling hair loss'.

52. Ms Sheldon referred us to the case study of Clare McKenna and to the two letters dated 18 May 2005 from Mr Martin Kelly (Consultant Craniofacial and Plastic Surgeon). The case of Ms McKenna is described by Mr Kelly as follows: "*This is a girl with neurofibromatosis who suffered a surgical mishap in Scotland many years ago. As a result, she lost part of her skull and overlying hair. We have successfully picked up the pieces for her here at Chelsea and Westminster and the remaining piece of the puzzle that is missing is to afford her a hairpiece that will cover her disfiguring alopecia*".

53. Ms Sheldon directed us also to a letter (undated) from Dr Sarah Riley addressed 'To any whom it may concern'. Dr Riley is stated as being a practising General Practitioner at the Putney Mead Medical Centre in London. This letter stated (amongst other points) that:

"*I am writing to endorse the treatments offered by Cosmedical Hair Design. It is now possible to help patients suffering from hair loss due to a number of causes, e.g. alopecia, Trichotillomania, genetic thinning, accidental damage, etc.*

Lucinda and Mark Sharp have devised a technique known as a KC which uses the existing hair base to attach a gauze to which more hair can then be added to give the appearance of a full, natural looking head of hair.
I have referred patients for treatment and will continue to do so because I have seen them return with improved confidence and self-esteem…. I believe it should be available to NHS patients as a treatment for the many causes of hair loss".

54. We were referred as well to an article in October 2009 from the magazine Wedding Ideas. This article, in summary, detailed the situation of Lucy Perkins who was a 26-years old person who had been diagnosed with leukaemia and who had been given the all-clear after several sessions of chemotherapy. However, the chemotherapy treatment that she had received had resulted in hair loss. Ms Perkins was soon to be married and the article details how she made use of the Kinsey System which transformed her look.

55. The Respondents maintain that significant hair loss in women should not be considered as a disability in itself. Ms Ameerally for the Respondents emphasised the distinction between the hair loss in itself and the underlying cause of the hair loss. It was stated that significant loss or baldness does not necessarily have a long-term and substantial adverse effect upon the ability of an individual to carry out everyday activities.

56. With reference to the letter of Dr Riley and the causes of hair loss referred to in that letter, it was stated by Ms Ameerally that alopecia does not in itself limit the ability of an individual to carry out everyday activities. Reference was made also to accidental hair loss which, Ms Ameerally submitted, could occur without a chronic illness or disability.

57. Ms Sheldon made the point that there is very little case law directly on the issue of significant hair loss or baldness and whether or not it constitutes a disability. We were referred to the case of *Campbell v Falkirk [2008] EAT* (unpublished). That decision (non-binding) applied the law as it was under the Disability Discrimination Act 1995. The case considered baldness in the context of a man. Mr Campbell was a teacher in a school who alleged that he had been harassed and subjected to name-calling with reference made to his baldness. Mr Campbell asserted that his baldness was a physical impairment and that it constituted a disability.

58. It was held by the Employment Tribunal (at paragraph 15) that: "*The claimant's position is that baldness is an impairment. Judging that against the Guidance, case law and applying the ordinary meaning of impairment, I am of the view that baldness is not an impairment. It seems to me to take the definition of impairment too far if baldness of itself is to be regarded as being an impairment. It is an aspect of physical appearance, in effect, when unrelated to any other illness. If baldness was to be regarded as an impairment then perhaps a physical feature such as a big nose, big ears or being smaller than average height might of themselves be regarded as an impairment under the DDA*".

59. We were referred also to the case of *Finn v The British Bung Manufacturing Company [2022] EAT* (unpublished). That case involved a complaint of harassment in which the baldness of Mr Finn had been commented upon with the use of offensive language by a work colleague. It was stated by the Employment Tribunal (at paragraph 235) that: "*In our judgment, there is a connection between the word "bald" on the one hand and the protected characteristic of sex on the other. Miss Churchouse was right to submit that women as well*

as men may be bald. However, as all three members of the Tribunal will vouchsafe, baldness is much more prevalent in men than women. We find it to be inherently related to sex. (In contrast, we accept that baldness affects (predominantly) adult males of all ages so is inherently not a characteristic of age)".

60. Neither party provided us with any information or statistical evidence relating to the actual incidence of baldness in men as compared to women but we have no hesitation in finding that baldness is more prevalent in men than in women.

61. In respect of the Equality Act 2010, we were referred to the definition of disability at section 6 but not to Schedule 1 (Disability: Supplementary Provision) of the Act. The Equality Act 2010 does not contain a list of disabilities although certain medical conditions expressly are stated to be a disability. Section 6 (Certain medical conditions) of Schedule 1 states, at 6(1), that: "*Cancer, HIV infection and multiple sclerosis are each a disability*".

62. Neither did either party make any express submissions relating to the specific meaning of 'impairment' nor as to the specific meaning of 'chronic illness' which appear in VAT Notice 701/7.

63. In relation to the meaning of 'chronic illness', the Appellant did not adduce any medical evidence to assert that significant hair loss or baldness in women is considered as a chronic sickness by the medical profession. The letters from Mr Kelly and Dr Riley do not make any statement to that effect. We find, based upon the available evidence, that significant hair loss or baldness in women is not treated as a chronic illness by the medical profession and we find that it is not a chronic illness.

64. In respect of the meaning of impairment, reference was made to this in *the case of Campell (*at paragraph 14*)* although neither party made reference to it. A non-exhaustive list of different types of impairment that may arise was referred to in *the case of Campbell.* These included: sensory impairments (such as those affecting sight or hearing); impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME)/chronic fatigue syndrome (CFS)….; progressive (such as motor neurone disease…); organ specific, including respiratory conditions such as asthma and cardiovascular diseases including thrombosis, stroke and heart disease; learning difficulties...

65. Based upon the evidence available to us, and on a balance of probabilities, we are not inclined to find that significant hair loss or baldness in women is an impairment. In any event, if we had found that significant hair loss or baldness in women is an impairment, we do not find that it has a long-term and substantial adverse effect on the ability of women to carry out everyday activities. In reaching that conclusion, we understand fully and have taken into account the instructive and helpful comments that Mr Kinsey made at the hearing about the transformative impact that the Kinsey System can have.

66. In summary, having considered carefully the submissions of the parties on this point, we find that <u>significant hair loss or baldness in women is not, in itself, a disability</u>. We find that significant hair loss or baldness in women does not fall within the wording of Note 3 to Schedule 8 of Group 12 VATA94 or VAT Notice 701/7 (or of section 6 of the Equality Act 2010).

67. The Appellant submits also that, if it is not accepted that significant hair loss or baldness in women is a disability in itself, then those who are suffering from a serious illness or disability nonetheless fall within Item 3 of Schedule 8. In this respect, Ms Sheldon referred by way of examples to anxiety and depression resultant from alopecia, to cancer, and to trichotillomania (an urge to pull out hair). We were referred also to the eligibility declaration for goods and services for disabled people and charities serving their needs in relation to which a person must declare that they are chronically sick or have a disabling condition and must give a full and specific description of their condition. Ms Ameerally stated, in respect of the eligibility declaration, that production of the eligibility declaration does not automatically justify the zero-rating of a supply and that completion of the eligibility declaration by clients is not a pre-requisite for using the Kinsey System.

68. The Respondents submit that the Kinsey System was not designed solely for use by disabled people and that those who are not disabled can and do use the Kinsey System as in the case of those, as referenced by Dr Riley, who suffer from accidental hair loss. That said, it was not disputed by the Respondents that a proportion of the clients of the Appellant who use the Kinsey System do so after loss of hair due to a chronic illness or disability. In that respect, Ms Ameerally emphasised that the loss of hair resultant from treatment for cancer (by way of example) is not a disability in itself but that the disability is the cancer itself. That, we find, is demonstrated in the case of Ms Perkins referred to earlier.

69. Having found that significant hair loss or baldness in women is not, in itself, a disability, we find that there could be clients of the Appellant who make use of the Kinsey System who meet the definition of a disabled person such as Ms Perkins who was suffering from cancer which is recognised as a disability (and specifically stated as being a disability in the Equality Act 2010). That said, in our view, the significant hair loss or baldness in itself would not be a chronic sickness or disability.

Does the Kinsey System come within the meaning of 'services of adapting goods to suit his condition'

70. The Appellant maintains, in their skeleton argument, that there is a supply of services of adapting the individual fibres into the mesh to specifically address the individual hair loss suffered which is unique to each client's hair loss and that this includes a team of two people individually working to thread the fibres together. At the hearing, Mr Kinsey gave evidence that the wig received from the wigmaker was adapted to the size of the client's head and to the position where it should be on the head and then areas of the mesh would need to be filled.

71. The Respondents contend that the Kinsey System should be seen as a service as a whole and that the parts of the client journey as described by Mr Kinsey all form part of an overall service provided. What Mr Kinsey described as the fitting and adaptation of the wig was not adapting a wig, not adapting goods, but involved integration and brought with it a continuing obligation that required a labour-intensive maintenance of the Kinsey System every six weeks. The process referred to by Mr Kinsey as 'adaptation of the wig' was not one of adaptation but rather one of attachment and integration as described by Mr Kinsey in his witness statement (at paragraph 44).

72. Ms Ameerally submitted that to consider the Kinsey System as the supply to a disabled person of services of adapting goods to suit his condition is to artificially break up the Kinsey System for the purpose of establishing a VAT rating. It was submitted that the Kinsey System is not a wig nor the adaptation of a wig but a hair integration technique that allows for a semi-permanent transformation and which requires regular, ongoing maintenance.

73. In that respect, we were referred by Ms Ameerally to the case of *Benyon and Partners (Respondents) v. Her Majesty's Commissioners of Customs & Excise (Appellants) [2004] UKHL53*. That case concerned a partnership of doctors in general practice within the NHS located in a rural area with patients not within easy reach of a pharmacy. The doctors were, therefore, permitted to dispense prescription drugs directly to those patients in the same way as a pharmacist would. Prescription drugs dispensed by a pharmacist were stated to be zero-rated for VAT and the practice registered for VAT so as to be able to obtain a refund of the input tax on the drugs it dispensed. The practice also claimed the input tax on drugs, such as vaccines, which the doctors personally administered to patients.

74. The Customs and Excise Commissioners took the view that "*the personal administration of a drug by a doctor constituted a supply of medical services, rather than a supply of drugs, and as such the transaction was exempt from VAT and the input tax could not be recovered*". The Court of Appeal decided, however, that the personal administration of a drug involved both a supply of goods, in the provision of the drug, and a supply of services, in its administration, and that, consequently, the input tax was recoverable.

75. The House of Lords, though, held that "*a transaction should not be artificially dissected; that the level of generality which corresponded with social and economic reality was to regard the transaction as the patient's visit to the doctor for treatment and not to split it into smaller units; that on such a view the correct classification of the personal administration of drugs to patients was as a single supply of services*…".

76. Having considered the arguments of both parties, we do not accept that the Kinsey System can be considered as the supply to a disabled person of services of adapting goods to suit his condition. We do not find that the Kinsey System can be seen as the adaptation of a wig. We find that the Kinsey System is a labour-intensive system which allows for a semi-permanent transformation. We find that it requires ongoing, regular maintenance a number of times on a six-weekly basis after fitting. We find also that maintenance is an essential part of the Kinsey System. We find that to consider the Kinsey System as one of services of adapting goods to suit his condition would be to dissect artificially what the Kinsey System does. We find that the Kinsey System is a single supply of services and that it does not, therefore, fall within Item 3 of Schedule 8 of Group 12 VATA94.

77. Ms Sheldon referred us to Part 4.2 (Medical and surgical appliances) of VAT Notice 701/7 and, specifically, to wigs being an example of an eligible item for zero-rated appliances. Ms Sheldon made the point that if wigs that were a medical and surgical appliance were a zero-rated item, then the Kinsey System which was a better and safer method should also be treated as zero-rated. It was submitted that fiscal neutrality is a key feature of the VAT system and that the VAT system should not distort competition between suppliers. There would be scope for this if a wig (that fell within medical or surgical

appliances) could be zero-rated for VAT purposes but the Kinsey System was found to be standard-rated.

78. Part 4.2.1 states that: "*A medical or surgical appliance is a device or piece of equipment that's designed solely for the relief of a severe impairment or severe injury. Examples of severe impairments or severe injuries include amputation, rheumatoid or severe osteo-arthritis, severe disfigurement, congenital deformities, organic nervous diseases, learning disabilities and blindness*". Included within eligible items of zero-rated appliances are, amongst other items, artificial limbs, artificial respirators, heart pacemakers, invalid wheelchairs and wigs.

79. Ms Ameerally stated, which is agreed between the parties, that the Kinsey System is not a wig. Ms Ameerally also made the point that the Kinsey System was not designed solely for the relief of a severe impairment or severe injury given that it could, for example, be used by those who had suffered from accidental hair loss.

80. We recognise the point made by Ms Sheldon although we find that wigs which fall within the definition of a medical or surgical device designed solely for the relief of a severe impairment or severe injury are distinct to the Kinsey System. We find that the Kinsey System is not a wig. We find also that the Kinsey System is not designed solely for the relief of a severe impairment or severe injury.

DECISION

81. Our decision is that the supply of the Appellant known as the Kinsey System does not qualify for zero-rating under Schedule 8 Group 12 to VATA94 and that the Kinsey System is standard-rated for VAT purposes.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

82. 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.

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KELVAN SWINNERTON
TRIBUNAL JUDGE

Release date: 01st AUGUST 2024