TC04476

Appeal number: TC/2014/00570

VAT - assessment under Section 73 VAT Act 1994 - penalty under the Schedule 36 Finance Act 2008 - penalty assessment for 'deliberate prompted inaccuracy' in VAT return - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

DAVID ALAN LONG **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER RICHARD CROSLAND

Sitting in public at Tribunal Centre, Wilberforce Court, Hull on 22 January 2015

The Appellant in person

Ms John Nicholson Officer of HMRC, for the Respondents

DECISION

The Appeal

1. This is an appeal by David Alan Long ('the Appellant') against:

   i. An assessment raised by the Respondents ('HMRC') under the provisions of s 73 VAT Act 1994 for the VAT periods 03/10 and 06/10 issued on 17 October 2011 in the amount of £21,631.

   ii. A penalty raised under the provisions of Schedule 36 Finance Act 2008 issued on 12 October 2011 in the amount of £300.

   iii. A penalty raised under the provisions of Schedule 24 Finance Act 2007 issued on 11 November 2011 in the amount of £15,141.

2. The Appellant also applies for permission to appeal out of time. The review decision by HMRC was made on 11 November 2011 and therefore the appeal should have been lodged with the Tribunal no later than 11 December 2011. The notice of appeal was not however lodged until 4 February 2014.

3. The evidence consisted of a bundle of documents (including witness statements, legal references and authorities and correspondence) prepared by HMRC. In addition, the Appellant and Officers Elliot and Franklin (VAT Assurance Officers of HMRC) gave oral evidence.

Background and findings of fact

4. The Appellant registered for VAT, effective from 31 August 2009. His main business activity was described as 'welding'. The address shown on the application form was the Appellant's home address of Apartment 11, Belgrave Mansions, 24A Park Street, Hull HU2 8RR. As he had not yet secured business premises, he said that he was using a friend's business unit free of charge.

5. The Appellant's first VAT return for the VAT period 12/09 (31 August 2009 to 31 December 2009), was a 'repayment return'. Showing a claim from HMRC of £15,008.13. In box 1 of the return, output tax was declared as 'nil'. Input tax was declared as £15,008.13. As such a VAT Assurance Officer, Mr Christopher Franklin, visited the Appellant on 9 March 2010 to conduct a pre-credibility check and verify the return.

6. The Appellant did not have any business records set up at the time of the visit but produced three purchase invoices, all from MFS Flooring UK Limited (Invoice 241 dated 15.10.09; Invoice 302 dated 21.11.09; Invoice 345 dated 12.12.09) totalling £100,054; and a copy of quotation No. 98 dated 9 October 2009 to Al Garages Doors Security Equipment for £110,111.78.

7. Mr. Franklin noted that according to the quotation the Appellant had supplied the goods to Al Garage Doors Security Equipment on 15/16 December 2009. However he had not issued a sales invoice and had not received any payment for the supply. As a result, the tax point for the supply was the date the goods were supplied. The supply had however not been included in the Appellant's VAT return and output tax of £16,516.76 should have been declared in Box 1 of the return (value of quotation £110,111.78 x 15% VAT rate). HMRC therefore amended the return to account for the 15% output tax due. This changed the return from a repayment return to a payment return and as a

result he was due to pay £1,508.63. The Appellant's sales were subsequently checked and revised to £16,616.76 resulting in the net VAT payable by the Appellant being increased to £1,608.63.

8. The behaviour leading to the inaccuracy was considered 'careless' but the resulting penalty was suspended subject to agreed conditions being met.

9. Mr Franklin had also discussed the Appellant's likely future trading and established that his next few VAT returns would be payment returns. However his next two VAT returns for periods ending 31 March and 30 June 2010 were again repayment returns as below:

Period Ending	30.03.2010	31.06.2010
Output Tax	£ 3,372.95	£ 3,141.25
Input Tax	£17,283.87	£ 4,348.75
Net reclaim	£13,910.92	£ 1,207.50

10. On 31 May 2011 another VAT Officer attempted to carry out a pre-arranged visit to examine the Appellant's books and records for VAT. The Officer called at the Appellant's registered address, Apartment 11, Belgrave Mansions, 24A Park Street, Hull, HU2 8RR. An earlier appointment for 6 May 2011 had been postponed by Mr Long as he had telephoned and claimed that he had been attacked and hospitalised and as a result the business had subsequently been dormant.

11. The Appellant was not present at the address at the agreed time, but a man who advised the Officer that he was the new tenant of the flat said that the Appellant did return to the flat to pick up mail and as such it would be the best address to send correspondence.

12. HMRC contacted the Appellant by telephone, who explained that he was having difficulty getting his records from his former office which he shared with MFS Flooring UK Ltd ("MFS"). HMRC allowed further time for the Appellant to obtain his records and agreed a meeting at HMRC's office on 28 July 2011; however the Appellant did not turn up for the meeting.

13. HMRC issued a 'Notice to provide information' on 11 August 2011 for the production of various business records for the period 1 January 2010 to 31 March 2011. The Notice was issued under the provisions of paragraph 1, Schedule 36 of the Finance Act 2008.

14. The Appellant submitted form VAT 7, Application to cancel VAT registration on 12 September 2011, stating that his taxable turnover for the next twelve months would £0.

15. On 26 September 2011 HMRC issued a penalty warning letter advising the Appellant that if he did not produce the records requested by 10 October 2011 then a penalty of £300 would be charged.

16. Having received no response from the Appellant, on 12 October 2011 HMRC issued a penalty charge of £300 for non-production of the records.

17. On 17 October 2011, HMRC wrote to the Appellant advising that as he had failed to produce his books and records to verify his returns, assessments would be raised to recover the input tax reclaimed in VAT period 03/10 of £17,283.00 and in VAT period 06/10 of £4,348.00. HMRC pointed out that the Officer who visited on 9 March 2010 noticed that the Appellant had no sales orders in place and had no purchases on which to reclaim VAT in period ending 31 March 2010.

HMRC therefore considered it reasonable to assume that the input tax of £17,283.87 for period 03/10 and £4,348.75 for period 06/10 was not legitimate and should be denied.

18. On 11 November 2011, HMRC issued an Inaccuracy Penalty calculation summary letter, NPPS1, relating to penalties for period 03/10 totaling £12,098.10 and period 06/10 totaling £3,043.60.

19. In determining the penalty, consideration was given to the behaviour that led to the error and specifically to whether the error was made as a result of the Appellant's failure to take reasonable care, or as the result of a deliberate act. On the basis of the evidence available, Officer Elliot concluded that the error was made as the result of deliberate behaviour. It was noted that when Officer Franklin visited the Appellant on 9 March 2010, only three weeks prior to the end of the period under Appeal, he had concluded that any subsequent VAT returns should be payment returns, rather than repayment returns. In the course of examining the Appellant's records no evidence of any large impending purchases that would result in input tax of over £17,000.00 was produced. The Appellant made no mention of any such purchases. Officer Elliot also considered that the Appellant had subsequently been evasive as to what he had purchased and what had happened to the purchases. This indicated that the most likely explanation was that the supplies had never actually been made and that the input tax claims were false.

20. MFS Flooring Limited had gone into administration in February 2010 and Officer Elliot therefore concluded that at the time of Officer Franklin's visit in March 2010, the Appellant's books and records (such that they were) would have had been retained at his home. The visit had taken place after the date at which MFS had gone into liquidation and their premises vacated. It appeared that the Appellant's contention that the books and records had subsequently been taken to the premises that he had previously shared with MFS seemed implausible and were simply an effort to explain his failure to produce evidence in support of the claim. Requests had also been made for the Appellant to provide alternative evidence (such as bank statements) in support of the input tax claims. However this yielded no further documentation and therefore Officer Elliot concluded that on the balance of probability, the Appellant had deliberately claimed input tax to which he was not entitled. In determining the penalty no mitigation was allowed for Telling, Helping and Giving. The Appellant had not entered into any dialogue regarding how the errors had occurred but instead simply denied any possibility that his VAT returns had been completed incorrectly. He had provided no assistance in quantifying the error and had deflected any attempts to arrange to meet and discuss the matter. He had provided no books, records or other information to support his claim for input tax. The penalty was therefore calculated at 70% of the net tax under-declared.

21. The Appellant wrote to HMRC on 24 July 2012 advising that he was not sure what he had done wrong and asked for advice as to what he should do. The Appellant stated that any monies he was awarded should have been claimed back by HMRC from MFS VAT returns (the Appellant's manufacturer which had gone into administration). The Appellant advised that when he was visited by HMRC he was told the only thing he was doing wrong was not keeping a correct paper trail.

22. Officer Elliott responded to the Appellant on 9 August 2012 stating the Appellant's debt was made up of a VAT assessment totalling £21,631.00 (£17,283.00 and £4,348.00), interest of £860.68 (on the assessment) and penalties totaling £15,141.00.

23. Officer Elliott advised that when the Appellant was last visited by HMRC on 9 March 2010 it was established that he had failed to account for VAT of £16,516.76 in relation to a supply made in December 2010 and the Appellant's VAT return for period 12/09 was therefore amended. The visiting Officer also concluded at that visit that the next few VAT returns would be payment returns

whereas the returns for periods 03/10 and 06/10 submitted were both repayment returns. Officer Elliott also advised that it seemed to him that the input VAT claimed on the VAT return for period 12/09 may have also been claimed again in the return for period 03/10.

24. Officer Elliott pointed out that he had attempted to visit the Appellant and tried to make contact via several emails and telephone calls but was unable to have sight of any books and records. In the absence of any records to substantiate the claim to input tax on the returns for 03/10 and 06/10, HMRC raised assessments for the input tax claimed based on best judgement.

25. Officer Elliott asked the Appellant for evidence to demonstrate entitlement to the claims for input tax.

26. The Appellant advised HMRC via email on 13 September 2012 that he had managed to contact one of the directors of MFS Flooring Limited who had agreed to provide copy invoices from their Sage system. The Appellant requested a further 28 days to obtain the documents; this was agreed to by Officer Elliott.

27. No further evidence was received and on 15 October 2012 Officer Elliott wrote to the Appellant stating that as no further evidence had been received the Debt Management Unit would continue their action to recover the debt.

28. On 22 October 2012 the Appellant e-mailed and advised that a Mr Mason from HMRC had written to him confirming that his records were up to date and that the case was now closed. Officer Elliot e-mailed back the following day and explained that although he hadn't seen the letter, evidence was still required to support the input tax claims that had been assessed.

29. On 24 October 2012 the Appellant e-mailed stating that he was confused as he thought the letter he had received from HMRC's Mr Mason, meant all matters were cleared up and his file was closed. He stated that he would attempt to send the information required within 24 hours.

30. On 25 October 2012 Officer Elliot advised the Appellant that Mr Mason worked for HMRC's Hidden Economy Team and that he had been looking into the Appellant's Self-Assessment Income Tax affairs rather than VAT. Mr Mason had closed the case because the Appellant had ceased to trade.

31. On 16 November 2012 the Appellant e-mailed to request that he be provided with details of all of the VAT returns he had submitted. These were duly provided on 19 November 2012. [Set out below].

Period	12/09	03/10	06/10
Output Tax	£16,516.76	£3,372.95	£3,141.25
Input Tax	£15,008.13	£17,283.87	£4,348.75
Net Tax	£1,508.63	£13,910.92	£1,207.50
Outputs	£99,101.00 -	£19,274.00	£17,950.00
Inputs	£100,054.00	£98,765.00	£24,850.00

32. On 22 November 2012 the Appellant e-mailed Officer Elliot advising that he had had only two orders for his product, one in late 2009 and one in April 2010. He had been invoiced around £100,000.00 for materials before the period 12/09 return was due but no sales invoices were produced as the goods to be supplied to his purchaser were "pre-manufactured" and he was waiting for a delivery schedule. This should have meant a repayment of VAT of around £15,000.00. The Appellant said that he thought he had been advised that he could not include the purchase in this 12/09 period and should carry it forward into the following period 03/10. He therefore reclaimed the input tax in period 03/10 VAT return but no sales were made in this period. He appeared to have forgotten that the input tax claimed in 12/09 had been included in his return.

33. On 25 November 2012 the Appellant sent a further e-mail advising that he would obtain and forward copy bank statements from HSBC.

34. On 26 November 2012, Officer Elliot replied to the two e-mails to say that the Appellant had received two repayments from HMRC, one relating to VAT period 03/10 and the other for VAT period 06/10 and that he had been assessed for the input tax reclaimed as he had not produced any evidence in support of his claims. He had also not declared output tax sufficient to demonstrate the use to which the purchases had been put. If the input tax claims in periods ending 31 March and 30 June 2010 were legitimate, then the obvious questions were firstly what had happened to the goods that had been bought and secondly why had output tax not been declared on the corresponding sales in his VAT returns.

35. On 19 December 2012 the Appellant forwarded an e-mail he had received from his customer who advised that he would scan and send the invoice he received from the Appellant dated around April 2010. This was received later that day, a sales invoice numbered 0001 dated 30 April 2010 to Al Security Fencing and Shutters, for a supply of security fence holdings net value £5,032.91, VAT £880.75. No VAT number was shown on the sales invoice. Later that day the Appellant sent a copy of the same sales invoice but this time showing his VAT number.

36. On 21 December 2012 Officer Elliot wrote to the Appellant explaining that copy sales invoice demonstrated that goods were sold in period 06/10 with a net value of £5,032.91 but nothing more. He advised that evidence was still required to demonstrate that the input tax reclaimed in periods 03/10 and 06/10 was legitimate. Officer Elliot also said that it was odd that the copy sales invoice was issued on 30 April 2010 and was numbered 001, when sale had been declared on the VAT return for period 03/10.

37. On 15 January 2013 the Appellant e-mailed again attaching another copy sales invoice issued to Al Security Fencing and Shutters. This was also dated 30 April 2010, and numbered 004 again with a net value of £5,032.91 and VAT of £880.75. A copy of a request for a quotation from Al Security Fencing and Shutters dated 4 October 2009 was also included along with a copy of a purchase order dated 9 October 2009 from the same company showing a net price of £110,111.78.

38. On 16 January 2013 Officer Elliot wrote to the Appellant advising that the additional paperwork provided gave little information regarding the input tax claims in periods 03/10 and 06/10 and suggesting that the best way forward would be for him to come into the office to discuss the matter.

39. On 30 January 2013 the Appellant wrote to Officer Elliot and included a letter purporting to be from the director of MFS Flooring UK Limited (MFS), Mr. Tony Sims confirming that the purchase invoices sought by the Appellant no longer existed. The letter from Mr. Sims went on to say:

> "……what I can confirm is that any monies paid to you by HMRC through your VAT returns was claimed back and repaid to HMRC through our (MFS) VAT returns."

(Mr Sims' comments would have been a reference to the Appellant's 12/09 return.)

40. On 12 February 2013, as the Appellant had provided no documentation or information to support his 03/10 and 06/10 input tax reclaims, the Appellant was reminded that the assessment and penalties had been upheld on review and that the 30 days within which he could have lodged an appeal to the Tribunal following the assessment and penalty notice on 11 November 2011 had long since expired.

41. On 4 February 2014, the Tribunal received the Appellant's appeal, which was dated 10 December 2013.

Relevant legislation

42. The relevant legislation relating to an assessment to VAT is contained at s73 VATA 1994, which states:

> "73(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.
>
> 73(2) In any case where, for any prescribed accounting period, there has been paid or credited to any person-
>
> (a) as being a repayment or refund of VAT, or
>
> (b) as being due to him as a VAT credit, .
>
> an amount which ought not to have been so paid or credited, or which could not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly."

43. The relevant legislation relating to the assessment of a penalty is at Schedule 24 Finance Act 2007.

> "2 (1) A penalty is payable by a person (P) where-
>
> (a) an assessment issued to P by HMRC understates P's liability to a relevant tax, and
>
> (b) P has failed to take reasonable steps to notify HMRC, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.
>
> (2) In deciding what steps (if any) were reasonable HMRC must consider-
>
> (a) whether P knew, or should have known, about the underassessment, and (b) what steps would have been reasonable to take to notify HMRC.
>
> (3) In sub-paragraph (1) "relevant tax" means any tax mentioned in the Table in paragraph 1.
>
> (4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph)-

(a) “assessment” includes determination, and

(b) accordingly, references to an under-assessment include an under-determination.

3(1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is-

(a) “careless” if the inaccuracy is due to failure by P to take reasonable care,

(b) “deliberate but not concealed” if the inaccuracy is deliberate on P’s part but P does not make arrangements to conceal it, and

(c) “deliberate and concealed” if the inaccuracy is deliberate on P’s part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).

(2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P’s part when the document was given, is to be treated as careless if P-

(a) discovered the inaccuracy at some later time, and

(b) did not take reasonable steps to inform HMRC.

4(1) This paragraph sets out the penalty payable under paragraph 1.

(2) If the inaccuracy is in category 1, the penalty is-

(a) for careless action, 30% of the potential lost revenue,

(b) for deliberate but not concealed action, 70% of the potential lost revenue, and

(c) for deliberate and concealed action, 100% of the potential lost revenue.

(3) If the inaccuracy is in category 2, the penalty is-

(a) for careless action, 45% of the potential lost revenue,

(b) for deliberate but not concealed action, 105% of the potential lost revenue, and

(c) for deliberate and concealed action, 150% of the potential lost revenue.

4(4) If the inaccuracy is in category 3, the penalty is-

(a) for careless action, 60% of the potential lost revenue,

(b) for deliberate but not concealed action, 140% of the potential lost revenue, and

(c) for deliberate and concealed action, 200% of the potential lost revenue.

(5) Paragraph 4A explains the 3 categories of inaccuracy.

4A(1) An inaccuracy is in category 1 if-

(a) it involves a domestic matter, or

(b) it involves an offshore matter and-

(i) the territory in question is a category 1 territory, or

(ii) the tax at stake is a tax other than income tax or capital gains tax.

13(1A) A penalty under paragraph 1, 1A or 2 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(2) An assessment-

(a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),

(b) may be enforced as if it were an assessment to tax, and

(c)may be combined with an assessment to tax.

(3) An assessment of a penalty under paragraph 1 or paragraph 1A must be made before the end of the period of 12 months beginning with-

(a) the end of the appeal period for the decision correcting the inaccuracy, or

(b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(4) An assessment of a penalty under paragraph 2 must be made before the end of the period of 12 months beginning with-

(a) the end of the appeal period for the assessment of tax which corrected the understatement, or

(b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(5) For the purpose of sub-paragraphs (3) and (4) a reference to an appeal period is a reference to the period during which-

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

18(1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P's behalf.

(2) In paragraph 2(1)(b) and (2)(a) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

(3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2).

(4) In paragraph 3(1)(a) (whether in its application to a document given by P or, by virtue of sub-paragraph (1) above, in its application to a document given on P's behalf) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

(5) In paragraph 3(2) a reference to P includes a reference to a person who acts on P's behalf in relation to tax."

The Appellant's Case

44. The Appellant's grounds of appeal, as stated on his Notice of Appeal are, in summary, as follows:

i. That the documentation required by HMRC to substantiate the 03/10 and 06/10 input tax claims have been 'removed by a third party'.

ii. That an assessment and penalties in total exceeding £37,000 from losing two documents was very harsh.

iii. That there had been delays and confusion as a result of HMRC writing to an address that he had vacated.

iv. That a Mr Mason had at one stage told him that he owed no tax and that his file had been closed.

45. At the hearing, the Appellant said that he worked as a self-employed welder. He had gone through a difficult time financially and had to stay with relatives and friends when he left the flat at Belgrave mansions. The product which he designed for which he thought there would be a good market was a fence levelling device. Friends put him in contact with MFS Flooring who introduced him to Al Garage Doors Security Equipment. Both were interested in his product and MFS had spare space at their premises in which he could work.

46. In cross-examination the Appellant acknowledged that his estimated projected turnover was wildly optimistic. He had only been given two orders. One was from Al Garage Doors, but he could not recall who the other one was. He agreed that this contradicted his sales figures for 12/09, 03/10 and 06/10 of £99,101, £19,000, and £17,950 respectively as set out in VAT returns.

47. In response to further cross-examination, the Appellant said that he did not actually receive the monies for the first order. He had only received £12,000. He said that halfway through the job "the customer pulled the plug" and MFS took back their materials and equipment before going into administration.

48. The Appellant then conceded that he had not actually paid the £100,054 in period 12/09 (or indeed any monies in period 03/10) saying that MFS had provided the materials and equipment 'on loan'. He was unable to explain why he had declared inputs of £98,765 in 03/10.

49. The Appellant was also unable to explain why he claimed £17,283.87 in period 03/10 whilst acknowledging that he had no sales in that period or how he could have submitted returns in 06/10 showing purchases from MFS (and input tax) when they had gone into administration four months earlier.

50. The Appellant was unable to explain why he had not been able to produce any copy bank statements.

The Respondents' Case

51. Mr Nicholson, for HMRC, said that HMRC objected to the Appellant's application for permission to make a late appeal. The onus was on the Appellant to submit his appeal in time and there had been no satisfactory explanation for the delay in submission of his appeal.

52. Mr Nicholson said that the case against the Appellant was overwhelming. It was clear on the evidence that in periods 03/10 and 06/10, VAT refunds had been claimed that should not have been and that under s 73(2) VATA 1994, the Commissioners may assess those amounts as being VAT due from the Appellant.

Conclusion

53. We allow the application for permission to appeal out of time. Clearly HMRC continued to correspond with the Appellant after November 2011 and right up to the point in time immediately prior to February 2014, when the Appellant lodged his Notice of Appeal with the Tribunal. In those circumstances, and throughout that period, it is understandable that the Appellant thought HMRC may decide to review the decision and that a formal appeal to the Tribunal would not have been necessary.

54. With regard to the substantive issues, the disclosure was a 'prompted' disclosure within the meaning of Schedule 24, paragraph 9 (2) (b), FA 2007. All disclosure is 'prompted' unless it falls within the definition of an 'unprompted' disclosure as within Schedule 24, paragraph 9 (2) (a) FA2007, that is, where made at a time when the person making it has no reason to believe that HMRC had discovered it or are about to discover it.

55. The definition of 'deliberate' is provided for in Schedule 24, paragraph 3 (1) FA 2007 which states it is '....if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it'. In this case, the inaccuracy arose when the Appellant failed to provide evidence of entitlement for the input tax declared on his VAT returns for periods 03/10 and 06/10. The behaviour type is classed as deliberate as the Appellant was not forthcoming with the full facts of the transactions nor had he provided any credible evidence to support his claim to the point that HMRC feel it unlikely that the transactions took place at all.

56. Throughout HMRC's period of enquiry the Appellant made no attempt to explain the figures in his VAT returns or produce documentary evidence in support. He steadfastly maintained that supplies had taken place and that he was entitled to recover tax of £15,118.42 (£13,910.92 and £1,207.50) in respect of periods 03/10 and 06/10.

57. The Appellant effectively acknowledged in evidence at the hearing that his VAT returns for the periods 03/10 and 06/10 were not only carelessly incorrect, but in fact false. The input tax reclaimed in VAT periods 03/10 and 06/10 amounts to £21,632.62 and the output tax declared for the same VAT periods was £6,514.20. The Appellant was not entitled to recover £21,632.62 input tax and in fact now concedes that there were no purchase or sale transactions during those periods.

58. In those circumstances we have to agree that the assessment was correctly made by HMRC and the penalties were correctly levied.

59. The appeal is dismissed and the assessment of £21,631 and penalties of £15,141 and £300 confirmed.

60. 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.

MICHAEL CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 12 June 2015