Appeal number: TC/2012/06386

VAT – zero rating – Item 1, Group 9, Schedule 8 VATA 94 – whether zero rating applicable to "caravans" exceeding a certain size applies to vehicles commonly known as "motor caravans", "motor homes" or "camper vans" – held no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

OAK TREE MOTOR HOMES LIMITED **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**
MOHAMMED FAROOQ

Sitting in public in Priory Court, Bull Street Birmingham on 21 January 2015

David Scorey of counsel, instructed by Deloitte LLP for the Appellant

Peter Mantle of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This appeal concerns the question of whether the supply of vehicles commonly called motor homes or motor caravans should qualify for the zero rating which historically applied to supplies of "caravans" above a certain size.

2. The Appellant (having initially accounted for output tax on the sale of such vehicles) had submitted claims (as mentioned at [3] below) ("the Claims") for repayment of output tax on the basis that its supplies should have been treated as zero-rated.

The facts

3. We heard no live evidence. The evidence before us comprised a bundle of documents and an agreed statement of facts, which read as follows:

> "1. A partnership ("the Partnership") carrying on the business now carried on by the Appellant was originally registered for VAT with effect from 20 January 1997, under VAT registration number 738 2286 15 ('the VRN').
>
> 2. The business was transferred as a going concern to the Appellant in April 2008. The Appellant was registered for VAT with the VRN, in substitution for the Partnership, and has continued to use it ever since.
>
> 3. The Appellant is a company incorporated under the laws of England and Wales under company number 05261680. The Appellant's primary business is the retail sale of motor homes.
>
> 4. During the period 1 May 2007 to 31 May 2011 ("the **Claim Period**"), the Appellant[1] made sales of motor homes.
>
> 5. Some of the motor homes which the Appellant sold during the Claim Period were new, and some were second-hand.
>
> 6. The motor homes which the Appellant sold during the Claim Period were a range of models and makes.
>
> 7. The Appellant has made claims under section 80 of the Value Added Tax Act 1994 ("VATA") for output tax of £1,181,480.53 (plus applicable interest) in respect of sales of certain motor homes in the Claim Period (the "Claims"). The Appellant contends that the output tax was not due to the Respondents by reason of the supplies being subject to the zero-rating in item 1 of Group 9 of Schedule 8 of VATA. The Claims were made by two letters dated 31 May 2011 (in the

[1] From the earlier paragraphs, it would appear more likely that the sales in question, insofar as they occurred before April 2008, were made by the Partnership rather than by the Appellant, but neither party took any point on this.

> amount of £62,564.47 for the period from 1 March to 31 May 2007) and 31 August 2011 (in the amount of £1,118,916.06 for the periods from 1 June 2007 to 31 May 2011 respectively).
>
> 8. By a letter dated 5 March 2012, HMRC rejected the Claims on the basis that the Appellant's supplies of motor homes were standard-rated. That decision was upheld on a statutory review, as notified by HMRC's letter dated 14 May 2012.
>
> 9. Given their position that the supplies were standard-rated, the quantum of the Claims has not been verified in detail or accepted by HMRC."

4. No evidence going to the detailed quantification of the claim was before us, the parties being agreed that any issues of quantification could follow as necessary once the issue of principle concerning the availability (or otherwise) of zero-rating had been determined.

5. The bundle of documents comprised chiefly the historical correspondence between the parties and promotional literature in respect of a sample of the motor homes the subject of this appeal (and of a brand of large non-motorised touring caravans), giving reasonable details of their characteristics. From that material, it is evident that the vehicles concerned in this appeal will generally (if not invariably) include facilities analogous to those included in any residential accommodation, namely toilet, washing, cooking and sleeping as well as general relaxation. Apart from the ability to move from place to place under their own power, the facilities included in the motor homes are very similar in type and extent to those included in the large non-motorised touring caravans.

The law

6. The provision which the appellant seeks to rely on is as follows (being the wording which was, until 5 April 2013, contained in Item 1 of Group 9 of Schedule 8 Valued Added Tax Act 1994 ("VATA"):

> "Caravans exceeding the limits of size for the time being permitted for the use on roads of a trailer drawn by a motor vehicle having an unladen weight of less than 2,030 kilogrammes."

7. By virtue of section 30(2) VATA, supplies of goods falling within that description were zero-rated at the relevant time.

8. By virtue of changes to the Road Traffic legislation, it appears that the actual dimensions were changed with effect from 20 April 2010 (the permitted width increasing slightly), but nothing hangs on that change for the purposes of this appeal.

9. There are no explanatory notes in Schedule 8 VATA to assist us, nor is there any relevant statutory interpretation provision which is explicitly stated to apply for present purposes.

10. The word "caravan" is however defined in one statute, the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"), whose name adequately describes its purpose. Section 29(1) of that Act provides (so far as relevant) as follows:

> "In this part of this Act, unless the context otherwise requires –
>
> …
>
> 'caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include –
>
> (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or
>
> (b) any tent."

Submissions of the parties

Submissions on behalf of the appellant

11. On behalf of the appellant, Mr Scorey pointed out that Item 1 of Group 9 was one of the derogations provided for in Article 28 of the Sixth VAT Directive (now Article 110 of the Principal VAT Directive) and that, as such, its interpretation was a matter of domestic UK law. He argued that any suggestion that the provision should be interpreted "restrictively" should be resisted. He referred to the Advocate General's opinion in *Customs & Excise Commissioners v Zoological Society of London* [2001] case C-267/00, when he said:

> "I agree that the exemptions from VAT should be strictly interpreted but should not be whittled away by interpretation. The Commission is right in that regard to contrast the notions of 'strict' and 'restrictive' interpretation. As a corollary, limitations on exemptions should not be interpreted narrowly, but nor should they be construed so as to go beyond their terms. Both exemptions and any limitations on them must be interpreted in such a way that the exemption applies to that to which it was intended to apply and no more. Thus, I would agree with the Society that it is appropriate to consider the purpose of the relevant provisions in their context."

12. Mr Scorey also submitted that the interpretation should take account of developments since the introduction of the zero-rating provision, referring to the comments of the First-tier Tribunal in *Harrier LLC v HMRC* [2011] UKFTT 725 (TC):

> "Nor can the domestic provisions be construed so as to reflect only the circumstances applicable at the relevant date of 1 January 1991. Mr Thomas referred in argument to Article 110 being a "standstill" provision. It is that, in the sense that the domestic law had to provide

> for the zero-rating at 1 January 1991, and no new zero-rating could later be introduced. But a provision which provides for zero-rating for a category of goods cannot itself stand still, any more than the commercial world can (or will) do so. Technological advances in printing mean that products which in 1991 would not have been conceived of are now a reality, and fall to be classified for VAT purposes. If the construction of the domestic provisions encompasses those new products, they will fall to be zero-rated."

13. Mr Scorey referred to the fact that HMRC, in their own published guidance (VAT Notice 701/20 dated February 2004), said that "in practice we base our interpretation on the definitions in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968". He pointed out however that HMRC, in quoting the provisions of the 1960 Act in that Notice, had omitted the crucial reference to "any motor vehicle so designed or adapted", thus (mistakenly) omitting the very words that brought motor caravans within the definition of "caravan" in the 1960 Act. In addition, in paragraph 2.1 of that Notice, HMRC had said that "[w]e see the term caravan as including mobile homes, residentials, statics, etc.", which in Mr Scorey's submission pointed to such a wide interpretation of the word that motor caravans should clearly be included in it; and this was in his submission reinforced by HMRC's alterations in the 2012 version of the same Notice, where they said "[w]e see the term 'caravan' as including mobile homes (often known as residential park homes), static caravans (often called caravan holiday homes or lodges), but not motor caravans (often called motor homes)" - he regarded the change as a telling pointer towards the fact that HMRC had effectively sought to change their ground after finding that their own earlier guidance did not accurately quote the legislation to which it referred and could be seen as providing support for including motor homes in the zero-rated category.

14. Given that "absent language indicating an express divergence, one would expect the definition of a "caravan" in VATA 94 to follow that in the Caravan Act", it was clearly appropriate, in his submission, to treat the 1960 Act definition as being at least "the starting point" (as had been done by the FTT in *University of Kent v HMRC* [2004] UKVAT V18625).

15. In his submission, if one simply applied the definition of "caravan" in the 1960 Act to the present case, motor caravans would quite clearly fall within it (and we did not understand Mr Mantle, for HMRC, to be disputing that point).

16. But even if one were to treat the 1960 Act definition as only a starting point, Mr Scorey submitted, there was still good reason to regard motor caravans as being "caravans" for the purposes of VATA 94. The zero rating provisions contained nothing to suggest that any element of suitability for continuous residential occupation was required, or any degree of permanence of location (contrasting the specific requirements for zero-rating of house-boats); and any "purposive" approach to the issue would be bound to reflect the fact that a motor caravan was just as "akin" to normal dwellings as any unpowered caravan, from the point of view of the accommodation it provided.

17. Finally, he observed that things had moved on greatly in the motor caravan world since 1991, but in line with *Harrier LLC*, it was not appropriate to regard the zero rating provision as limited to the specific products available at that time; if technical improvements had given rise to new products which fell within the terms of the original zero-rating provision, then they should benefit from it.

HMRC's submissions

18. Mr Mantle sought to make something of the fact that the parties had, by agreement, referred to the vehicles in question in the agreed statement of facts as "motor homes" and not as "motor caravans". However, as he pointed out, "what matters is the substance, the properties, features and objectively ascertained function of the goods supplied, not the words used to label them" (whilst of course recognising that we are here concerned with the true meaning of the word "caravan" in VATA 94). Nonetheless, he submitted that reference to the vehicles as "mobile homes" was entirely inappropriate, given the Shorter Oxford English Dictionary definition of "Mobile home" as "a large transportable structure, as a large caravan, set up permanently and used as living accommodation".

19. Mr Mantle submitted that the provisions of Item 1 of Group 9 should be interpreted "strictly", but not "narrowly" or "restrictively". This required an examination of the purpose and context (as well as the text) of the relieving provision. In this, he and Mr Scorey appeared to be largely in agreement.

20. Mr Mantle's only other explicit reliance on principles of EU law was his submission that any temptation to extend the scope of the relief by reference to market or product developments since 1991 should be resisted, and his reference to the requirement of Article 110 in the Principal VAT Directive for any "standstill" zero rating reliefs to have been "adopted for clearly defined social reasons and for the benefit of the final consumer" – which he said formed "part of the context when addressing the purpose of Item 1".

21. He submitted that what was required in this case was an "orthodox" and "simple" approach to the construction of some UK legislation, requiring a consideration of the "ordinary meaning of the word 'caravan'", the context and the purpose of Item 1.

22. He discounted any argument based on the detailed wording of HMRC's guidance from time to time as irrelevant, since that guidance had no legal effect, and could not be regarded in any way as authoritative.

23. So far as the 1960 Act definition of "caravan" was concerned, he pointed out that on its face it was stated only to apply "in this Part of this Act", and its obviously extended scope was clearly intended to assist in the wider purpose of the 1960 Act of controlling and licensing development (as was explicitly recognised by the VAT and Duties Tribunal in *University of Kent*).

24. He also referred to *Royal Borough of Windsor & Maidenhead v Smith* [2012] EWCA Civ 997, in which the Court of Appeal was concerned to establish whether Ms

Smith should be committed for breach of an injunction which prohibited her from causing or allowing "any further caravans (which term includes mobile homes) to be brought onto the land beyond the 10 caravans already stationed on the land…" That case, he submitted, emphasised the importance of being sensitive to the context and purpose of the provision (or, in that case, injunction) containing the word "caravan". Even though the case was ultimately concerned with breach of planning regulations, the Court of Appeal held that the word "caravans" where it appeared in the injunction, should not be interpreted in line with the 1960 Act but rather should take its meaning from "ordinary usage of the English language." Etherton LJ went on to say (at [26]):

> "What is a caravan, and a dwelling, is, therefore, always a matter of fact and degree according to the legal and non-legal context."

25. Mr Mantle pointed also to the fact that, where Parliament had wished to adopt the 1960 Act definition of caravan for tax purposes, it had specifically done so, as seen in sections 875 of the Income Tax (Trading and Other Income) Act 2005 and section 1314 of the Corporation Tax Act 2009. Its failure to do so in relation to the VAT zero-rating provision was therefore telling.

26. Mr Mantle referred also to the dictionary definition of "caravan" (from the Shorter Oxford English Dictionary) which was quoted in *Smith*:

> "a covered carriage or cart… Now usu. A dwelling on wheels, able to be towed by a horse or motor vehicle".[2]

In his submission, this definition was clearly not apt to cover a self-propelled motor home such as the vehicles subject to this appeal.

27. Finally, he invited the Tribunal to infer (by reference to the "Notes to Clauses" on the relevant Finance Bill provisions) a purpose on the part of Parliament of affording zero-rating only to "houses and other domestic accommodation", benefiting only caravans that were "too large to be towed on the road, and are usually permanently sited with some degree of attachment to the land." To afford zero-rating to motor homes would go beyond this purpose.

Discussion and decision

28. We agree with both parties that our task is to decide, on the basis of a strict (but not restrictive) interpretation, in accordance with principles of English law, whether the vehicles the subject of this appeal can properly be described as "caravans", in the context in which that word is used in Item 1, Group 9, Schedule 8 VATA 94.

[2] He also cited the current edition of the same dictionary, which gives the following slightly altered definition: "orig, a covered carriage or cart… Now, a vehicle for living in, usu. designed to be towed."

29. We do not consider that HMRC's reference, in VAT Notice 701/20, to the 1960 Act definition of "caravan" assists us. That notice only reflects HMRC's understanding of the law.

30. As to the definition itself, we note that it is specifically stated to apply only for the purposes of the relevant part of the 1960 Act in which it appears and Parliament has chosen not to adopt it specifically in relation to VAT (in contrast to its specific adoption for other tax purposes).

31. We decline Mr Scorey's invitation to treat the 1960 Act definition of "caravan" as either determinative or a starting point. We consider the task before us is to decide whether, in accordance with the ordinary usage of the English language, the word "caravan" in the context in which it appears is apt to include vehicles of the type with which this appeal is concerned.

32. First, we would wish to dispose of any suggestion that a vehicle which, in ordinary English usage, might commonly be called a "motor caravan" must necessarily be part of a subset of the wider category of "caravan", thereby automatically falling within that wider category. The falseness of any such suggestion is clearly illustrated by reference to May J's observation in *Customs & Excise Commissioners v Colour Offset Limited* [1995] STC 85 in the High Court (at p. 90) that "[A] cheque book is plainly not a book".

33. Second, when considering the ordinary English usage of the word "caravan" in isolation, we do not consider it encompasses motorised vehicles.

34. Third, when considering the legislative context in which the word "caravan" appears, in particular the fact that the size qualification was set by reference to size limits for towed vehicles, it seems to us that the draftsman clearly had in mind vehicles that were dependent upon an external source of locomotive power, rather than self-propelled vehicles.

35. Whilst accepting that a motor caravan may very well contain all the same living facilities as its non-motorised cousins, we do not consider that should affect our decision. The fact of the matter is that it differs from its cousins in a very important respect, namely the ability to move under its own power. We can see no reason founded in either domestic UK law or EU law principles for disregarding this important distinction simply because both types of vehicle can be used for residential purposes.

36. It follows that we find the vehicles the subject of this appeal fall outside the description in Item 1 set out at [6] above and accordingly the appeal is DISMISSED.

37. 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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KEVIN POOLE
TRIBUNAL JUDGE
RELEASE DATE: 3rd June 2015