ASSESSMENT – Underdeclaration – Registered trader – Appellant registered when starting franchised double glazing business – Appellant carried on taxi driving activities at same time – Double glazing turnover below threshold – No returns made of taxi driving receipts – Assessment covered receipts from both activities – Whether wrong to include taxi driving receipts – No

LONDON TRIBUNAL CENTRE

MULLIGAN (G A) - Appellant
- and -
THE COMMISSIONERS OF CUSTOMS AND EXCISE - Respondents

Tribunal: STEPHEN OLIVER QC (Chairman)

S K DAS

Sitting in public in London on 19 November 2002

The Appellant in person

Clive Palmart for the Respondents

DECISION

1. Mr G A Mulligan appeals against an assessment for VAT dated 8 January 2002. The tax assessed is £1,386 and a further £32.26 of interest is charged. In the course of the hearing we heard evidence from Mr Mulligan. We also heard evidence from Michael Russell, assurance manager for the Redhill area.

2. Mr Mulligan registered as a sole proprietor for VAT with effect from 12 February 1999. His registration application described his main business activity as "double glazing repairs". Mr Mulligan has also been a taxi driver operating in the London area.

3. On 10 December 2001 an officer visited Mr Mulligan's premises and inspected his records and accounts. It appeared from these and from what Mr Mulligan told him that Mr Mulligan had not included his taxi driving income in his VAT returns.

4. On return to his office the visiting officer wrote to Mr Mulligan setting out the results of his findings and including a schedule of calculations of the VAT not declared. The underdeclarations related to four separate periods of assessment.

5. Following receipt of the letter of 10 December 2001, Mr Mulligan wrote to the visiting officer stating that the figures that he had quoted "appear to be correct".

Mr Mulligan observed that the additional tax appeared to him to be unjust and that he would be appealing it.

6. The Commissioners formed the view that the returns made by Mr Mulligan for the purposes of VAT for the period 1 August 1999 to 31 October 2001 were incorrect in that the amount of output tax had been underdeclared. Accordingly they assessed the amount of VAT due from Mr Mulligan to the best of their judgment in respect of that period in the amounts set out in paragraph 1 of this Decision.

7. Mr Mulligan admitted that he had been carrying on both the double glazing repair activity and the taxi driving. He had explained this to the officer at the time of the visit. Mr Mulligan said that he saw the assessment as a form of penalty. The cab driving regulations governing his cab driving activities set down the amounts that he was required to charge. There was no scope for adding VAT to any fare on the grounds that he was registered. It was, he claimed, unfair that he should now be charged VAT. He had not been advised by his accountant that that should be charged on the cab driving receipts. He admitted that when he had registered for VAT he had been provided with a Customs Notice 700 and that, had he read that carefully, he would have learnt that the consequence of registration was to make all his supplies chargeable to VAT. He further pointed out that the visiting officer had not told him at the time of the visit that he would be assessed to VAT on the cab driving receipts; this, Mr Mulligan inferred, revealed a real area of doubt on the part of the Customs as to whether he should or should not have charged VAT.

8. The law is contained in VAT Act 1994 sections 3(1) and 4. These provide that a person is a "taxable person" while he is, or is required to be, registered under the VAT Act. They further provide that VAT is to be charged on any supply of goods or services made in the UK, where it is a "taxable supply" made by a "taxable person" in the course or furtherance of any business carried on by him. A "taxable supply" is defined to mean a supply of goods or services made in the United Kingdom other than an exempt supply. On the strength of his registration Mr Mulligan has at all material times been a taxable person. He has, we think, been making "taxable supplies" covering both the double glazing supplies and the cab driving supplies. The cab driving supplies are supplies made in the course of the business because they are systematically conducted for reward.

9. It seems to us that Mr Mulligan has been fairly and squarely within charge to VAT as regards both his double glazing repair supplies and his cab driving supplies. We can find no good reason to exclude Mr Mulligan from such charge. On that basis we consider the assessment to be correct.

10. Although we have no jurisdiction in the area of "extra-statutory concessions", we mention a feature of this case covered by Mr Clive Palmart for the Commissioners. The Commissioners, Mr Palmart admitted, had some sympathy with Mr Mulligan. They had carefully looked at the extra statutory concessions covering "misunderstanding by a VAT trader" and "misdirection". Mr Michael Russell came and gave evidence stating that he had considered the possible impact of these two concessions. He could find no evidence of any misdirection on the part of any Customs officer. Mr Mulligan had been sent the Notice 700 at the time of his registration. Nothing said or done by any Customs officer had or could have misled Mr Mulligan to his detriment. For that reason, Mr Russell concluded, the misdirection concession has no application and, for what it is worth, we agree. Turning to the "misunderstanding" concession, we note that it depends on four conditions being satisfied. The third of these conditions is that "the

misunderstanding does not concern any aspect of the tax clearly covered in general guidance published by Customs and Excise". Notice 700, as we have already mentioned, does specifically state that the registered person must account for VAT on all the taxable supplies made by him by way of business. We refer, for example, to paragraph 4.6.1. For that reason, we consider that Mr Mulligan does not qualify for any relief under the misdirection concession.

11. It was understandable, in our view, that the visiting officer should not have told Mr Mulligan that he had been underdeclaring his supplies and that he would be receiving an assessment. The visiting officer needed to be completely sure before providing such disturbing information. Perhaps Mr Mulligan should have been advised by his accountant of the implications of registration; we cannot comment on that save only to say that it has no affect on the outcome of the present decision.

12. For all the reasons we have given we dismiss the appeal.

STEPHEN OLIVER QC

CHAIRMAN

RELEASED:

LON/02/149-MUL.OLI