TC04863

Appeal number: TC/2014/05131

VALUE ADDED TAX — alleged suppression of takings — whether suppression established — yes — whether assessments realistic — yes — appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BETWEEN

SATPAL SINGH LAGHMANI Appellant

- and –

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS Respondents

Tribunal: Judge Colin Bishopp
Mrs Caroline de Albuquerque

Sitting in public in London on 5 January 2016

The appellant appeared in person

Bernard Haley, presenting officer, for the respondents

DECISION

1. At all times material to this appeal the appellant, Mr Satpal Singh Laghmani, carried on business as a shopkeeper from premises in Uxbridge Road, Hanwell, a busy thoroughfare in west London. The shop was primarily an off-licence, but in addition Mr Laghmani sold a small range of groceries. The shop also offered Oyster card top-ups and had a PayPoint by means of which customers could pay for their gas and electricity supplies.

2. At the beginning of 2013 Mr Laghmani's business became the subject of a VAT inspection. He was told in advance of a visit on 7 February 2013, and asked to make sure that his till rolls were available for inspection when the officers arrived. It seems that Mr Laghmani had not hitherto been using till rolls, even though he was using tills. When the officers visited they found that Mr Laghmani had followed the instruction, and they examined the roll from the one till which they observed on the occasion of that visit. Mr Laghmani was asked to continue using till rolls, and was advised that a further visit would follow. In fact, an unannounced visit was made on 12 February, in order to check that the instruction was still being followed, as it was. On that occasion, the officers discovered that there were in fact two tills in use and extracted the till rolls from both of them.

3. Subsequent analysis of the till rolls revealed that the "no sale" button had been pressed on what the officers regarded as an excessive number of occasions. They came to the conclusion that, save for a relatively modest number of legitimate uses of the no sale button on each day, it had been used in order to conceal the true value of Mr Laghmani's sales. That is, that Mr Laghmani was making a sale but, rather than keying in the amount and recording it is a sale, was simply pressing the no sale button so that the amount received was not recorded on the till roll.

4. One of the two officers who visited on 12 February 2013 was Humaira Hydrie, who has special training in the interrogation of tills. She conducted an examination of the two tills and undertook an analysis of the takings as recorded as well as the number of times on which the no sale button had been used. We shall return to the detail of her analysis shortly. The analysis led to an assessment which was made, not by Ms Hydrie, but by another officer who had visited the shop with her on 7 February, Kamljeet Cheema. The assessment related to the prescribed periods from 11/09 to 05/13 inclusive, in the aggregate sum of £101,550. The appeal now before us is against that assessment.

5. Mr Laghmani represented himself at the hearing, while HMRC were represented by a presenting officer, Mr Bernard Haley. Although it was Mr Laghmani's appeal, Mr Haley agreed to present HMRC's case first. We had the evidence of Ms Cheema and of Ms Hydrie, and then heard from Mr Laghmani. We also had various relevant documents.

6. Mr Laghmani handed over the shop to his sisters in about July 2013, but at the times material to the assessment he was its sole proprietor. It was Ms Cheema who telephoned him in December 2012 to make arrangements for the 7 February visit, and who then explained to him what records she wished to see, including the Z-readings extracted from the till. On the occasion of the visit, she and Ms Hydrie carried out an inspection of the premises to determine the nature of the business,

which was as we have described it above. Both of the witnesses told us that only one till was identified at that visit. Till rolls, including Z-readings, had been kept from the time of Ms Cheema's telephone call and they were taken up.

7. As we have said, the presence of the second till was discovered on the second visit, on 12 February, and both tills were then interrogated by Ms Hydrie. There was further contact between Ms Cheema and Mr Laghmani in July 2013, and a third visit to the shop on 25 July 2013, when Mr Laghmani was not present. It was on this occasion that Ms Cheema established that he had left the premises, and that the shop was now being run by his sisters. Further communication with Mr Laghmani and his then adviser followed, but neither was able to explain to Ms Cheema's satisfaction why the no sale button had been pressed so frequently. Ms Cheema made her assessment on 10 March 2014. Initially it included period 08/13, but later that period was removed on the basis that the shop had by then been transferred to Mr Laghmani's sisters.

8. Ms Hydrie's analysis of the till readings showed that the no sale button had been used on the first of the tills 1,809 times over the 40 days for which information was available, and on the second of the tills 1,753 times over the 36 days for which information was available. She took the view that the maximum number of occasions on which the no sale button might legitimately be pressed was 10 per till per day; this was, it seems, a number Mr Laghmani had himself suggested. On that basis there were 1,409 uses of the no sale button on the first till and 1,393 uses on the second till in excess of the assumed legitimate use. The value of the average recorded sale on the first till was £7.45, and on the second £5.74. Ms Hydrie assumed that each of the excess uses of the no sale button represented a suppressed sale, and that the value of each suppressed sale was, on average, the same as that of the recorded sales. Those assumptions led her to the conclusion that sales of £262 per day had been suppressed by use of the first till, and of £222 per day by use of the second till.

9. Ms Cheema adopted Ms Hydrie's findings in her subsequent discussions with Mr Laghmani and his then adviser, and as they could not explain to her satisfaction why the no sale button had been used so frequently, and were unable to offer any satisfactory alternative approach, she adopted the same findings in making her assessment—in other words, she extrapolated the calculated level of suppression over the entire period covered by the assessment. Mr Laghmani maintained that the second till was not used at all, a claim which Ms Cheema rejected, and he maintained that he had not suppressed his sales, a claim which she was also unwilling to accept. His then representative asked for a review, indicating that further evidence could be provided, but in the event none was forthcoming.

10. Mr Laghmani told us that all of his daily takings were placed in one or other of the two tills in the shop. He explained to us that the Oyster and PayPoint terminals both recorded the amount taken each day, and that his routine had been to cash up at the end of the trading day, subtract from the cash and the totals shown on the credit and debit card slips the amounts recorded by the two terminals, and attribute what was left to the day's sales of goods; he recorded the resulting figure in his sales record. He then gave that record to his accountant, on a periodic basis. He paid the gross amount he received from the Oyster and PayPoint customers to Transport for London and the energy suppliers respectively

and received periodic commission payments. These were recorded in his annual accounts separately from his sales.

11. We offered Mr Laghmani the opportunity to explain why the no sale button was shown to have been used so frequently on his tills, but he was unable to do so. He told us that he had made no attempt to hide the second till on the occasion of the 7 February visit, but could not explain why the officers had missed it, or why he had not volunteered to them that he had a second till when it was clear that they wanted to take the till rolls for inspection. He added that he used the second till only for his Oyster and PayPoint transactions.

12. We are satisfied from the evidence we heard that Mr Laghmani was suppressing his sales. We agree with Ms Cheema and Ms Hydrie that the number of no sales recorded is much higher than could reasonably be expected, and in the absence of any alternative explanation from Mr Laghmani we must also agree with them that the assumption they made that excessive use of the no sale button was indicative of a sale made but not recorded is correct. Indeed, it was apparent to us as he gave his evidence, even though he did not say so expressly, that Mr Laghmani recognised that he had not declared all of his sales.

13. The assessment was made in accordance with section 73 of the Value Added Tax Act 1994. That section provides that "where it appears to the commissioners that [a trader's] returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment". We have no doubt, from their evidence and from the absence of any reasoned challenge by Mr Laghmani, that Ms Cheema and Ms Hydrie did exercise their judgment properly. It has long been established that once an assessment of this kind has been made, it is for the taxpayer to show that it is incorrect, by persuading the tribunal that the correct amount to be assessed is less, including nil. Unfortunately for him, Mr Laghmani has not been able to produce any material from which we could determine that the assessment should be for a different amount. There is simply nothing before us from which we could attempt an alternative approach.

14. In those circumstances the only course open to us to is to dismiss the appeal and uphold the assessment.

15. 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.

COLIN BISHOPP
TRIBUNAL JUDGE

RELEASE DATE: 3 FEBRUARY 2016