



Mr Steve Greensill
Pursglove & Brown
Military House
24 Castle Street
Chester, CH1 2DS

30 September 2014

Dear Sir,

APPELLANT : Landstruction Ltd
OUR REF : TC/2014/00792

A Tribunal determined the above proceedings on 26 September 2014. Enclosed is a copy of the decision notice. Please note that this is a summary decision notice.


Also enclosed is an information sheet which explains what you may do if you are not satisfied with the decision. Please note the following important points:

- You may not apply for permission to appeal unless you have been issued with a full decision notice; you have the right to apply for a full decision notice but if you do so you must make your application in writing and ensure that your application is received by the Tribunal within 28 days after the date of this letter;
- If you apply for permission to appeal after receiving a full decision notice and if permission is granted, your appeal will be heard by the Upper Tribunal (Tax and Chancery) Chamber. The Upper Tribunal has a discretion to make an award of costs, and this means that if your appeal is unsuccessful, you may have to pay towards the other party's legal costs in opposing your appeal.

Please note that if you provided any original letters, documents or other items (such as exhibits) to the Tribunal and you would like them back you must notify the Tribunal within 14 days from the date of this letter or otherwise the Tribunal may destroy them.

Enc: (1) Decision

Yours faithfully


Anita Moss
Tribunal Clerk



INVESTOR IN PEOPLE



Appeal number: TC/2014/00792

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LANDSTRUCTION LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE JOHN N. DENT
 MEMBER PETER WHITEHEAD**

Sitting in public at Liverpool on 26th September 2014

Having heard Mr Kaney for the Appellant and Ms Fletcher Officer of HM Revenue and Customs for the Respondents

1. The Tribunal decided that the appeal should be allowed
2. This appeal was on the grounds that the Appellant's agent had made a genuine error on registration of the Appellant company for VAT, and that HMRC ought to have agreed the amendment of the date of registration from 13th October 2010 to 1st June 2011.
3. The Tribunal heard witnesses Steve Greensill, the Appellant's agent, David Binks, Director of the Appellant and Christine Owens, an employee of the Appellant's agents. The Review Officer for HMRC, Mr Crombleholme, was not present to give evidence.
4. The facts are that the appellant's agent submitted an online application form to register the Appellant company for VAT on 10th June 2011. The form indicated that the Appellant was incorporated on 13th October 2010 and was making taxable supplies. Mr Greensill authorised the transmission of the form, which was completed by a junior member of staff at his office. He could not recall if he had seen it before transmission, but it bore a certificate in his name that it was correct.

5. There was an error on the form, which requested that the effective date of registration should be 13th October 2010, whereas the intention was that it should be 1st June 2011

6. The error only came to light following a VAT inspection. The Appellant's agent wrote to HMRC on 6th January 2012 requesting that the date of registration be amended to 1st June 2011. HMRC replied on 19th January 2012 stating that under the provisions of Schedule 1 VAT Act 1994, the date of registration could not be amended. The Appellant's agent asked on 12th December 2013 for an independent review. It was reviewed and the letter of review confirmed that the decision had been upheld.

7. The Tribunal found that there had been considerable delay on the part of the appellant in progressing the matter, but this did not affect the decision.

8. The Tribunal further found that the intention of the Appellant throughout the process was to register for VAT once its turnover reached the level where registration was required.

9. At the time of the original decision not to amend the effective date, HMRC operated a published policy under V1-28 regarding requests by traders to change the effective date of registration "EDR". It states that in limited circumstances HMRC might permit a retrospective change if there has been a genuine error in completing the VAT1 by the person registering. By the time of the review, the policy had been clarified under VATREG25350. In the finding of the Tribunal, this was clarification of a procedure already in place, and not the issue of new guidance. In any event, the Tribunal found that the clarification was in place at the time of the review, and should have been followed. This guidance is as follows:

"You may receive requests from registered traders to amend their EDR to a later date than that already allocated when they realise that they need not have registered when they did.

In limited circumstances, we may permit a retrospective change to the EDR if there has been a genuine error in completing the VAT 1 by the person registering.

The VAT Act 1994, Schedule 1, paragraphs 5 & 6 and paragraphs 9 & 10 do not allow an EDR to be varied after a trader is registered. When the trader applied for registration, he had the opportunity to negotiate his EDR: the registration legislation does not allow this date to be changed retrospectively. Also, the trader should have charged VAT from his EDR and any change to the EDR will present difficulties with accounting procedures and may lead to the possibility of unjust enrichment.

However, our collection and management of the tax powers at Schedule 11(1) give us some leeway to agree to an EDR change request where it would be unreasonable for us not to do so.

The eligibility criteria which we would usually apply when we are considering a request to change an EDR are

- the EDR given must, at the time of registration, have been a backdated EDR. In other words, at the time of application, the trader voluntarily applied for an earlier EDR*
- the trader must demonstrate that there was a genuine misunderstanding or error in completing the application form. That does not include an error of judgement, for example, he thought he would be in repayment but found in fact he was a payment trader*

- *the request must be made before the due date of the first VAT return (that is, one month after the end of the first period), which must not have been rendered.*
- *the trader must return the original VAT 4 certificate.*

You are not expected to work on the mechanistic basis that every business which does not meet all four of the change eligibility criteria must automatically have its change request refused. You should consider each trader's circumstances separately and think about how a First Tier Tribunal judge might regard those circumstances should the trader appeal against your decision to refuse the request.

The test of any decision is that it is reasonable and proportionate in all the circumstances of the case.

It is important that you:

- *look at each case on its own merits*
- *take account of all the relevant factors*
- *don't allow irrelevant factors to prejudice your judgement*
- *weigh the impact (if any) granting the request would have on overall tax yield against the impact refusing the request would have on the trader's business.*

You should keep a written record of every decision - this is particularly important where you have refused the request. This should include the factors you considered and any other relevant information that you took into account. Save the record to EF so that, if the trader appeals against your decision, your appeals team colleagues will be able to see how you reached it."

10. The review which took place on 8th January 2014 stated: "We have further considered the provisions relating to applications to change the date of registration made by a registered trader following the setting of a registration date by HMRC. Having done so and examined the facts of the case, I am satisfied that the Registration Service decided reasonably not to extend discretionary relief to amend the date originally given in this case, and therefore the decision of 19 January 2012 to retain the registration date of 13 October 2010 should stand."

11. There was no written record produced and the Reviewing Officer did not attend to give evidence as to how he had reached his decision.

12. It was clear in this case that there was a backdated EDR and that this had been a genuine error in completing the form. The request had not been made until after submission of the first VAT return, but had been made as soon as the error was realised. There would have been no problem in returning the VAT4 certificate.

13. The Reviewing Officer had not considered whether the effect of what was being asked was for a cancellation of the original registration, and a new registration request for 1st June 2011. In that sense, the case was similar to *Modified Gumball Rally Limited Known As Modball Limited (LON/2007/0632)*.

14. The Tribunal concluded that even if there was agreement between the Appellant and HMRC as to the EDR being 13th October 2010, HMRC had acted in a way which the Tribunal considered to unreasonable and disproportionate in all the circumstances of the case.

15. The Tribunal therefore allowed the appeal, and we therefore direct that the request from the Appellant to appeal against registration from 13th October 2010 and request registration from 1st June 2011 shall be reviewed by an officer or officers without any previous involvement with this appeal and in the light of our decision

16. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

JOHN N. DENT

**TRIBUNAL JUDGE
RELEASE DATE:30/09/14**

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