

Are installation services supplied to the customer or the supplier of the goods?

Fineline Bedrooms and Kitchens Limited (20049)

Summary

On the basis of the contractual arrangements between the supplier, the fitters and the customers, the Tribunal found that the supplies of installation were made by the fitters directly to the customers. The bedroom and bathroom supplier was not therefore liable to account for VAT on the installation services.

Background

The Appellant manufactured bedroom and kitchen furniture and was involved in arranging installation by fitters who were treated as independent contractors for income tax purposes.

Customers initially visited one of the Appellant's showrooms and the Appellant arranged for a designer to go to their house to take measurements for the furniture and prepare an estimate for fitting the furniture. A document headed " Fitter's suggested costings" was prepared by the designer and presented to the customer. It stated that installers were not employed by the Appellant.

On several of the Appellant's customer documents there appeared statements to the effect that "The fitting price is to be invoiced by and payable to the Fitter on completion" and "Please note that the recommended installers are not employed by Fineline Bedrooms and Kitchens Ltd."

The Appellant's designers and showroom staff were told to tell the customers that the Appellant did not fit the furniture but could supply them with the name of a fitter, unless the customer wished to make his or her own arrangements.

The Appellant controlled the delivery dates so that the furniture could be manufactured and delivered on time for the customer and sent a letter setting out the price, deposit and net amount and confirming when the delivery and installation would take place. It also stated that "The Fitters amount is £* (made payable to your Fitter on completion, he will invoice you for this amount)".

There was no contract between the Appellant and the fitter. The Appellant kept a list of recommended fitters, interviewed the fitters and inspected some of their work before including them on their list. The customers would first meet the fitter when he came to fit the furniture. In evidence, a fitter testified that he had been empowered to increase or reduce fitting charges without reference to the Appellants if the scope of the installation works changed.

The Appellant was concerned about potential difficulties if damage was done to the furniture during installation and had drafted a proposed 'satisfaction note' which bore the name of the installer, the customer's name and address and a space for customer comments. The note was to be signed by the customer and bore the legend "Installation work carries a 12 month guarantee by the installer".

HMRC contended that the Appellant supplied both the furniture and fitting services and assessed for underdeclared output VAT in respect of the charges for fitting.

Held

Referring to the High Court's decision in *Kieran Mullen Ltd v Customs and Excise Commissioners* [2003] EWCH 4 (Ch), reported in ITWH 2003/03, the Tribunal decided that the matter should be determined by reference to the contractual relationships between the parties.

In this case there was, in the Tribunal's opinion, no contract between the Appellant and the fitters. There was, however, a clear contract between the fitters and the customers. The contractual terms accepted by the customer when the fitter made arrangements to fit the units created that contract.

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The appeal was therefore allowed.

Implications

In this case, it appears that the Appellant had made significant efforts to distance the supply of installation services from the supply of goods, including empowering the fitters to alter the charges for their supplies. It sought to clearly establish in the documentation that the installation supplies were made by the fitters and that the customer's recourse would be against the fitters in the event that the goods should be damaged in the course of installation. Notwithstanding, HMRC still sought to challenge the arrangements.

Businesses operating similar installation arrangements should seek to ensure that they are able to evidence a similar contractual position, which the Tribunal found persuasive in this case.