

MTIC input VAT denial
Honeyfone Limited (20667)

Summary

In a recent VAT case the Tribunal accepted HMRC's contention that the Appellant should have been aware of MTIC fraud in its supply chain. However, the Appellant's claims to input VAT were allowed to the extent that the VAT claimed had been accounted for and paid to HMRC by others in the chain of transactions, limiting input VAT denial to the amount lost to the Revenue. On the Appellant's argument that HMRC's approach to traders involved in missing trader intra-Community (MTIC) fraud transactions was discriminatory, the Tribunal agreed that it is more difficult to be an exporter of goods rather than a seller within the UK market, and adjourned the case pending a referral to the ECJ.

Background

HMRC sought to deny claims to input VAT recovery by the exporter of goods at the end of a chain of transactions in which MTIC fraud had taken place. The Trader appealed the decision to deny any input VAT recovery. The Tribunal was asked to consider whether the Appellant's input VAT recovery should be wholly denied, or denied only to the extent of the VAT which had been evaded in the MTIC fraud. It was also asked to consider an argument of the Appellant concerning discrimination.

HMRC's approach to MTIC fraud was generally (as acknowledged by HMRC during the hearing) to seek to deny input VAT recovery to the exporter of the goods at the end of the chain of transactions, as opposed to challenging the recovery by the 'buffer' traders earlier in the chain. The Appellant argued that HMRC was discriminating against exporters and making trade more difficult for them than for businesses trading within the UK. Article 29 EC Treaty provided that "quantitative restrictions on exports and all measures having equivalent effect shall be abolished between Member States". Following the case of *Marco Grilli (C-12/02)*, the Member States were precluded from enacting national measures which restricted patterns of export and treated domestic and export trade in such a way as to provide an advantage for domestic traders, unless it could be shown that those measures were necessary to preserve public order or security.

Decision

The Tribunal held that there had been sufficient information available to the Appellant for its officers, given their experience in business, to have been aware that MTIC fraud would have taken place, and accepted that input VAT recovery should be denied. However, the Tribunal decided that the amount of the input VAT denied to the Appellant should not be more than the amount of the VAT evaded by means of the MTIC fraud. The appeal was therefore allowed in part.

On the discrimination point, the Tribunal agreed that HMRC's approach did make trade more difficult for exporters and had invited the Appellant to refer a question to the ECJ on this point. The Appellant indicated that it would do so, and therefore the case was adjourned pending the outcome of that referral.

Implications

This case could ultimately prove significant for traders in goods which are susceptible to MTIC fraud. The Tribunal was concerned to ensure that the denial of input VAT recovery by the exporter should not put HMRC 'in profit' or effectively constitute a penalty imposed on the Appellant.

The Tribunal also accepted that HMRC's admitted practice of denying recovery of input VAT to exporters was making trade by exporters more difficult than trade within the UK. If the Appellant's argument on discrimination is upheld by the ECJ, this may force HMRC to refocus its anti-MTIC fraud strategy on those perpetrating the fraud rather than on others who 'should have known' that a fraud would be committed by another.