

VAT assessments
The Raj Restaurant & Others

From 18 September 1995 a succession of companies were registered to carry on the business of the Raj Restaurant. HMRC concluded the companies were shams and that the business in reality was being run by four members of a family in partnership. In 2002 HMRC notified Raj Restaurant that they believed sales were being understated and that they would register the Raj Restaurant as a partnership. Any VAT already paid by the companies to HMRC would be deemed to have been met by the new registration but HMRC also transferred the outstanding estimated understated VAT liabilities. HMRC notified the businesses on 1 July 2002 that they would be registered with effect from 18 September 1995. HMRC could not prove that any notice of return periods had been issued before early 2007, when monthly returns were directed. When no return for the period ending July 2002 was submitted, HMRC issued an assessment under s73 of VATA 1994 for the period 18 September 1995 to 31 July 2002. A letter detailing the application of a penalty under s60(1) 'for evasion and dishonesty' followed in December. The company appealed to the Tribunal who found that the assessment and penalty were invalid. HMRC appealed.

By virtue of s25(1) of VATA 1994 and Regulation 25(1) of SI 1995/2518 returns are required in respect of prescribed accounting periods. The validity of the assessment therefore depended on whether the period 18 September to 31 July 2002 was a prescribed accounting period. The Court found that HMRC were incorrect to assume that where there was a delay in registration the first period must extend until after registration had occurred. Under legislation the obligation to submit returns every quarter also applied to a business that was required to be registered. As a result the one long period was not a prescribed accounting period because the requirements of Regulation 25 to vary the periods from calendar quarters by direction/permission and to notify any such variation by way of a certificate of registration had not been met. The actual prescribed accounting periods were quarterly (the default Regulation 25 position) until monthly returns were directed. HMRC's alternative argument that they were entitled to make a global assessment in respect of a number of periods was also dismissed as being inconsistent with the terms of the notice of the assessment.

In terms of the penalty the Court stated that an assessment and penalty need not always stand or fall together. The Court noted where a person was liable to a penalty under s60 of VATA 1994 relating to the evasion of VAT, s 76(3) provides that: "the assessment under this section shall be of an amount due in respect of . . . (b) . . . the prescribed accounting period for which the VAT evaded was due". Again the penalty is therefore invalid because the period was not a prescribed accounting period. The court dismissed HMRC's arguments under s76(4) which allows a penalty to be applied across more than one accounting period where the VAT "cannot be readily attributed to any one or more prescribed accounting periods" and where in consequence it was treated as due "for such period or periods as the Commissioners may determine to the best of their judgment". Accordingly HMRC's appeal was dismissed.

Analysis

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Although this case was very much determined on its individual and unusual fact pattern the underlying point is a general one. HMRC must comply with the law and regulations when issuing assessments. If they do not they cannot validly pursue taxpayers for payment of under declared VAT.