

Vending machines

[UKFTT 124 West Country Vending Service Ltd](#)

Background

West Country Vending Service Ltd (West Country) has around 5000 vending machines which are located in other business's premises. West Country typically services and stocks the machines and makes supplies of products such as chocolate bars and flapjacks etc. to end customers. Historically the supplies of all vending machine items were accepted as being standard rated. This was because, regardless of the underlying liability of the items, they were excepted from zero rating provisions under Schedule 8 of VATA 94. Supplies in the course of catering are excluded from zero rating in the very first paragraph of group 1. Notes 3 of the same group includes within a supply in the course of catering "any supply of it for consumption on the premises on which it is supplied."

In 2006 the Court of Appeal decision in [Compass Contract Services Ltd](#) found that food bought from kiosks but to be consumed elsewhere in the same building, were not supplied for consumption on the premises where they were supplied. Compass, which ran the kiosks, had no control over the areas where the food would be consumed. Applying this principle, West Country submitted a voluntary disclosure for over declared output VAT on items sold from its machines that would be zero rated if they were supplies other than in the course of catering.

HMRC accepted that where such machines were located in corridors, where there was no seating for example, and where food would not be eaten, they would in theory accept the claim. However, where the machines were in canteens, where food was regularly consumed, they considered the food bought from the vending machines was still consumed on the premises where it was supplied and therefore was standard rated. As no information on the location of the vending machines was submitted the claim was refused in full. West Country appealed.

Arguments

West Country argued before the Tribunal that all the relevant supplies were zero rated regardless of the location of the machines. Firstly it argued that following Compass, the items could not be consumed on the premises where they were supplied. West Country had control of the machine but often not the area on which it was located and certainly none of the areas around it. As an alternative argument, the tax payer argued that zero rating should apply because it had no subjective intention that the food was supplied 'for consumption' on the premises where it was supplied. West Country had no control over where the machines were located and was not concerned where the food was consumed as long as sales were made.

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Held

The Tribunal dismissed both of the taxpayer's arguments. The Judge agreed with HMRC that despite the supplier having no control over them, areas such as the surrounding canteen must, from a common sense approach, be treated as the same premises as the area occupied by the machine. Therefore to the extent that food sold from machines is for consumption in canteens, it is consumed "on the premises, where it was supplied". In dismissing the taxpayer's second argument the Tribunal found it irrelevant that the taxpayer claimed not to know the location of the machines and that the business's intention was simply to maximise sales. Whilst dismissing the taxpayer's case the Tribunal did accept that generally all the sales from corridor machines and even a significant proportion of canteen machine sales will be sold for consumption off the premises, but the appellant would need to evidence its claim for it to be paid.

Summary

Although having started its decision with Lord Justice Mummery's advice in Compass for Tribunals to stick to the language of the legislation and apply it with common sense, this Tribunal appears to have reached a different definition of premises from that reached in Compass. On the premises point in Compass (Para 52 to 56) the Court of Appeal found that in respect of Compass's kiosks, premises were limited to the units over which Compass had control and not the whole of the BBC premises. With West Country's vending machines, where there is no area under the supplier's control, 'premises' expands to include surrounding areas where food is consumed. The Tribunal was clearly uncomfortable with items being sold in the canteen being treated differently to that of a vending machine.

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