[2019] UKFTT 0675 (TC)

TC07450

VAT – liability to register – whether Appellant operating a business and making taxable supplies – yes – Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/03338

BETWEEN

MARITES SALABIT **Appellant**

-and-

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

TRIBUNAL: JUDGE DAVID BEDENHAM

Sitting in public at Taylor House, London on 4 September 2019

Tony Woon-Sam, accountant, for the Appellant

Phylis Okpara, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. The Appellant is a member of the congregation of St Pius X Roman Catholic Church ("St Pius"). In 2013, the Appellant's mother (who was also a member of the St Pius congregation) and the then parish priest told the Appellant that somebody needed to operate the bar of the social club that was affiliated to St Pius and that, if she agreed to so do, the Appellant would be helping St Pius and the wider congregation. The Appellant agreed to assist.

2. The Appellant's involvement with the social club bar came to HMRC's attention. HMRC reached the view that the Appellant was operating the social club bar as a business in her own right, and should have been registered for VAT between 1 April 2014 and 31 December 2015. HMRC therefore registered the Appellant for VAT for the period 1 April 2014 to 31 December 2015 and assessed the Appellant to VAT in the sum of £10,617.

3. The Appellant maintains that she was simply a manager of the social club bar and, accordingly, was not liable to register for VAT (and has no liability to VAT).

4. Ultimately, the issue in this case is whether the Appellant was conducting a business in the form of the social club bar (and making taxable supplies in the furtherance of that business) or whether the Appellant was merely a manager running the social club bar for St Pius. HMRC accepts that if I find the Appellant was the latter, she was not liable to register (and not liable to account for any VAT) and the appeal should be allowed.

5. I wish to make abundantly clear that there is no suggestion that the Appellant has behaved dishonestly or in any sort of blameworthy manner. This case is simply concerned with whether the Appellant's involvement with the social club bar, which I accept was triggered by her desire to assist St Pius and the wider congregation, was such that she was liable to register and account for VAT.

6. I also wish to record my thanks to Mr Woon-Sam and Ms Okpara for the manner in which they conducted the hearing. They each advanced their respective cases in a coherent and clear manner, and each made concessions where appropriate.

EVIDENCE AND FINDINGS OF FACT

7. There was no witness evidence on behalf of HMRC. Rather, HMRC relied upon documents in the hearing bundle.

8. On behalf on the Appellant, the Appellant herself and Father Peter Wilson, the current parish priest at St Pius, gave evidence. The Appellant also relied upon documents in the hearing bundle.

9. The Appellant's evidence, which I accept and find as fact, was as follows:

   (1) she arrived in the UK in 1998 and almost immediately began to attend St Pius;

   (2) her mother also attends St Pius and is heavily involved in its activities;

   (3) she assists St Pius and members of its congregation in a number of ways including visiting people who are sick or otherwise need help;

   (4) she worked as a housekeeper for a family that lived close to St Pius;

   (5) her mother asked her to help operate the social club so as to help St Pius. The Appellant agreed;

(6) the then parish priest said that the arrangement needed to be put on a more formal footing and gave the Appellant a document titled "management contract" ("the Agreement") to sign. The Appellant duly signed this on 28 February 2013;

(7) the Appellant did not understand all of the detail of the Agreement but understood the key terms of the Agreement, including that she:

(a) was liable to pay St Pius £625 in rent every week for the bar and this was due even if the bar did not make £625 in a given week;

(b) was responsible for all expenses including staffing costs; and

(c) was responsible for all debts incurred in operating the bar.

(8) The "expenses" term of the Agreement was not enforced in full. Specifically, the Agreement provided that the Appellant was responsible for rates and public liability insurance. However, the Appellant did not pay these, and assumes St Pius did. The Appellant did, however, pay for the bar's staff costs, TV licence, Sky television and supplier costs;

(9) the Appellant did not receive any "wage" from St Pius for operating the bar. She understood that if the bar made a profit that was hers to keep;

(10) the Appellant complained to the former parish priest that the bar was not making £625 per week which meant that she was having to pay some of the rent out of her other income. The parish priest agreed to reduce the rent to £500 per week;

(11) the Appellant understood that she was responsible for repairs/maintenance to the bar;

(12) the Appellant understood that she was liable if anything "went wrong" (e.g. patrons of the bar suffered from food poisoning);

(13) the premises licences was transferred to the Appellant in October 2013;

(14) the bar was open 7 days a week. Typically the opening hours were midday to 10pm;

(15) the bar served alcoholic and non-alcoholic drinks and some light meals;

(16) the Appellant would "open up" most days. On weekdays, the Appellant would then go to work (as a housekeeper) and parishioners (to whom the Appellant paid "small sums" of money) would serve behind the bar. The Appellant would then return to the bar to "close up". Throughout the day, the Appellant would monitor the bar by way of a camera;

(17) during weekends, the Appellant would serve behind the bar (as well as opening and closing it);

(18) the Appellant spoke with suppliers, placed orders and arranged deliveries;

(19) the Appellant deposited the cash takings from the bar into her personal bank account. Card payments were paid directly into the Appellant's personal bank account; and

(20) payments to suppliers were made from the Appellant's bank account. Sometimes the Appellant used her personal credit card to pay expenses relating to the social club bar. These expenses were not reimbursed by St Pius (consistent with the term of the Agreement that the Appellant was responsible for the bar's expenses).

10. Father Wilson's evidence, which I accept and find as fact, was as follows:

(1) St Pius is situated on St Charles Square. The church has various buildings attached to it. The ground floor of one of these buildings was the parish social club which consisted of a room containing a bar.

(2) some members of the congregation used the social club and its bar. But it was also used by people who did not attend St Pius;

(3) if a member of the congregation approached Father Wilson about use of the social club (for example for a wake), he would refer them to the Appellant. Whether or not a fee was payable for that use was between the "hirer" and the Appellant. Nonetheless, the social club was seen as a parish facility;

(4) the Appellant had to pay rent (£625 per week, subsequently reduced to £500 per week) and any other expenses but any profits were hers to keep; and

(5) despite the Agreement, St Pius paid the rates because St Pius knew that the Appellant was not generating sufficient income to meet these herself, and wanted to assist the Appellant where possible;

11. The documents in the hearing bundle consisted of:

(1) supplier invoices (for food and drink) typically made out to the Appellant with an address of St Pius X Social Club, although sometimes simply addressed to "St Pius Social Club";

(2) merchant services statements (summarising payments made by way of debit/credit cards) addressed to the Appellant at St Pius X Parish Club;

(3) invoices for Sky TV made out to the Appellant with an address of St Pius X Social Club;

(4) the Appellant's bank statement showing receipt of the takings from the social club bar and the payment of expenses (e.g. to suppliers).

(5) the Agreement; and

(6) correspondence between the parties.

THE LAW

12. Pursuant to ss 1 and 4 of the Value Added Tax Act 1994 ("VATA 1994"), VAT is charged, *inter alia*, on the supply of goods or services in the UK where that supply is a taxable supply made by a taxable person in the course of furtherance of any business carried on by him.

13. Section 94 VATA 1994 defines "business" as including any trade, profession or vocation. It is well established that "business" for the purposes of VATA 1994 has the same meaning as "economic activity" as used in Article 9 of the Principle VAT Directive, which provides:

> "Taxable person shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity…"

14. In *HMRC v Longridge on the Thames* [2016] TC 232, the Court of Appeal considered whether certain activity amounted to economic activity for the purposes of VAT. The Court (per Morgan J) set out various relevant propositions which could be distilled from the applicable case law. These propositions included:

(1) a taxable person is a person who carries on any economic activity, whatever the purpose of that activity;

(2) the character of the activity (i.e. whether it is economic activity) is to be judged objectively; and

(3) the subjective motive of the person making the supply does not influence the identification of the objective character of the supply; this follows from the proposition that the character of the activity is to be judged objectively.

15. Paragraph 1 (1) of Schedule 1 to VATA 1994 provides:

> "Subject to sub-paragraphs (3) to (7) below, a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule –
>
> (a) at the end of any month, if the person is UK established and the value of his taxable supplies in the period of one year then ending has exceeded [the registration threshold]; or
>
> (b) at any time, if the person is UK established and there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days then beginning will exceed [the registration threshold]."

16. At the time relevant to this appeal, the registration threshold was £81,000.

17. Paragraph 5 of Schedule 1 to VATA 1994 provides:

> "(1) a person who becomes liable to be registered by virtue of paragraph 1(1)(a) above shall notify the Commissioners of the liability within 30 days of the end of the relevant month.
>
> (2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the end of the month following the relevant month or from such earlier dates as may be agreed between them.
>
> …"

18. Pursuant to s73(1) VATA 1994, HMRC can, *inter alia* where a return required under the Act has not been made, assess the amount of VAT due to the best of their judgment.

SUBMISSIONS ON BEHALF OF THE APPELLANT

19. On behalf of the Appellant, Mr Woon-Sam accepted that the taxable supplies arising from the social club bar exceeded the VAT threshold thereby giving rise to a liability for *someone* to register for VAT for the period identified by HMRC. Mr Woon-Sam also accepted that *someone* was liable to account for VAT in the amount assessed by HMRC. However, Mr Woon-Sam submitted that that someone was St Pius rather than the Appellant.

20. Mr Woon-Sam submitted that the Agreement between the Appellant and St Pius was worded as it was (that is, the Appellant paid a fixed rent to St Pius each week and took responsibility for all expenses) because St Pius had previously "had its fingers burnt" and had been left with debts, and so wanted to ensure that it did not end up with any liabilities relating to the social club. However, in reality, this was simply an agreement that the Appellant would manage the social club bar for St Pius. Whilst in theory the Appellant was entitled to keep the profits, there were no profits. Had there been any profits, St Pius might well have sought to increase the rent (albeit Mr Woon-Sam fairly accepted there was no evidence that this would have been the case). It was therefore St Pius that was operating the business and making taxable supplies (Mr Woon-Sam having conceded that, despite comments made in correspondence,

there was no applicable VAT exemption, regardless of whether the supplies were being made by St Pius or by the Appellant).

SUBMISSIONS ON BEHALF OF HMRC

21. On behalf of HMRC, Ms Okpara submitted that it was the Appellant (rather than St Pius or anyone else) who was operating the social club bar as a business. In particular, Ms Okpara pointed to the following:

(1) the Appellant paid St Pius weekly rent. A manager would not be expected to pay rent;

(2) the Appellant banked the takings into her personal account;

(3) expenses were paid from the Appellant's personal account and sometimes using the Appellant's personal credit card;

(4) any profit made by the social club bar was the Appellant's to keep;

(5) the Appellant had significant autonomy in relation to how the social club bar operated;

(6) the Appellant accepted that she had understood that if anything went wrong (e.g. an outbreak of food poisoning), she would be liable rather than St Pius; and

(7) the invoices issued by suppliers and service providers were made out to the Appellant.

DISCUSSION AND DECISION

22. I have found as a fact that the Appellant's motivation for becoming involved in the operation of the social club bar was to assist St Pius and the wider congregation. That as may be, standing back and assessing the position objectively, taking into account all the circumstances, I am satisfied that the Appellant was operating the social club bar as a business in her own right (not as a "manager" or similar for St Pius) and was making taxable supplies in furtherance of that business. The following factors in particular lead me to that conclusion:

(1) the Appellant was required to (and did) pay rent to St Pius for the right to operate the social club bar. This rent was due regardless of the level of takings from the social club bar. This is not consistent with the Appellant being a "manager" or similar. It is consistent with the Appellant operating a business in her own right;

(2) the Appellant banked the takings (cash and card payments) into her personal account. This is not consistent with the Appellant being a "manager" or similar. It is consistent with the Appellant operating a business in her own right;

(3) any profit made was the Appellant's to keep. Again, this is consistent with the Appellant operating a business in her own right; and

(4) the Appellant was liable for all expenses incurred in relation to operating the bar (albeit I acknowledge that St Pius did continue to pay the premises rates). This is not consistent with the Appellant being a "manager" or similar. It is consistent with the Appellant operating a business in her own right.

23. In those circumstances (and given it was accepted that the registration threshold had been exceeded as alleged by HMRC), the Appellant was liable to be registered for VAT between 1 April 2014 and 31 December 2015. Accordingly, this appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

24. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. 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.

DAVID BEDENHAM

TRIBUNAL JUDGE

RELEASE DATE: 6 NOVEMBER 2019