HMRC - VATSC82110 - Sea Containers Services Ltd (High Court 2000 STC 82) & Durham River Trips Limited (MAN/99/876)

These two cases were important because they were the first following CPP to use the ECJ guidelines to rule there were separate supplies.

Both cases concerned supplies of transport and catering and the courts considered the main feature of the catering to be that it was significant in its own right rather than a means of better enjoying of the transport. The catering was ‘as a matter of commercial reality, a distinct and separate supply’ because the catering’s significance in both cases meant it was an aim in itself given its prominence in the marketing and the heavy emphasis on the wining and dining, therefore that element was ‘distinctive and important’.

In Durham River Trips Limited the trader ran river boat trips on the River Wear around Durham. The subject of the tribunal was an evening trip which included a meal (a bar was also provided, but takings from this were dealt with separately and there was no dispute on this aspect).

The trader argued that the purpose of the transaction was the river trip. A meal was provided in the form of a barbecue/buffet, but this was optional and all the passengers paid the same amount for the trip whether or not a meal was taken. Therefore the trader felt the meal was ancillary to the transport of passengers as it was a better way of enjoying the ride, rather than being an aim in itself (eating time was only the middle third of the trip - one hour out, one hour circling whilst eating and one hour back).

In finding for a multiple supply, the judgment said ‘we are satisfied that the barbecue meal was a distinct feature of the evening cruise as indeed the Appellant’s brochure strongly suggests. We do not consider that to look thus at the cruise in terms of two separate elements is artificial. It is both practical and realistic to separate the zero-rated from the standard-rated supply in the instant case’.

A similar decision was reached in Montgomery Canal Cruises (MAN/99/921).

Sea Containers Services Ltd also provided food and drink on day excursions and charters. The reasoning adopted in the Sea Containers case was that, in deciding whether there was a single supply or more than one supply, regard should be had to the commercial reality of the transaction and ‘the proper approach was to see whether the catering element in the instant case was to be regarded as significant in its own right rather than merely as a means to the better enjoyment of the transport.’

The judgment was that ‘in the instant case, there was no doubt that the provision of catering was, as a matter of commercial reality, to be seen as a distinct and separate supply. Its significance in the transactions went well beyond the point where it could be seen merely as a way of better enjoying the transport element. It constituted for the customers an aim in itself, not, of course, the sole aim, but, given its prominence in the marketing literature, clearly a separate aim from the travel element’.

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