HMRC - VATSC90600 - Facts And Judgment

In Redrow Group plc (House of Lords 1999), Redrow was a house builder that, as an incentive scheme, agreed with prospective purchasers of its new homes to pay the estate agent’s fees for selling the purchaser’s old home. The scheme was instituted because most prospective purchasers could not proceed with a purchase until they had found a buyer for their existing homes. However, Redrow did not just pay the fees - it actually selected the agents, engaged and instructed them (instructions could not be altered without Redrow’s agreement) and kept in close contact to ensure maximum effort was made to sell the old homes.

The case concerned whether the estate agent’s services were supplied to Redrow or the owners of the old home: this determined whether Redrow could recover input tax on the estate agents’ fees.

Customs & Excise issued an assessment for incorrectly claimed input tax since we considered the agents’ supplies were made solely to the owners of the houses, rather than to Redrow. Redrow appealed, saying it was acting as a joint principal and was a joint recipient of the supply, so it was entitled to reclaim input tax.

The tribunal accepted Redrow’s view and allowed its appeal, but the Court of Appeal allowed Custom’s subsequent appeal.

The House of Lords confirmed Redrow’s right to reclaim input tax on the estate agents’ fees. It is the comments made in the decision that have potentially far-reaching effects on how to determine the direction of supplies.

Lord Hope took the approach that the matter rested on an affirmative answer to two questions:

Was the supply received in connection with the business activity of the taxable person, for the purpose of being incorporated within its economic activities?

Was something done for him which, in the course or furtherance of a business carried out by him, he has to pay a consideration which has attracted value added tax?

He added that the word services is given such a wide meaning for VAT purposes that it is capable of embracing everything which a taxable person does in the course or furtherance of business carried on by him and which is done for a consideration. His view is that the name or description applied to the service is immaterial and questions such as who benefits from the service or who the consumer of the service is are also immaterial.

Lord Millet took this further and stated that the taxpayer has no right to deduct input tax if goods or services were to be paid for by someone else. The taxpayer may deduct tax if he obtains anything at all to be used for the purpose of his business in return for the payment made. This will normally consist of the supply of goods or services to the taxpayer but may consist of the right to have goods delivered or services rendered to a third party. The grant of such a right in itself is a supply of services.

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