

LONDON TRIBUNAL CENTRE

B E T W E E N:

QED MARINE

Appellant

- and -

THE COMMISSIONERS OF CUSTOMS AND EXCISE

Respondents

Tribunal: Peter Lawson (Chairman)

Richard Tilson and Claire Lodge for the Appellant

Hugh M^cKay, of Counsel, for the Respondents

Sitting in public in London on 26 June 2001

Decision: 4 July 2001

DECISION

1. This is an appeal by QED Marine which is a non-trading partnership of Mr Richard Tilson and Mrs Claire Lodge, which is not registered for VAT, against a decision of the Commissioners contained in a letter to the Appellant from Jon Powley, a review officer at the Southampton VAT Office dated 29 November 2000. The decision was that the supply to the Appellant of the hull of the boat "Alchemist", together with other items used in its construction, is standard rated rather than zero rated, as the hull was not a complete vessel and so could not constitute a "qualifying ship" for the purposes of Group 8 of Schedule 8 of the VAT Act 1994. I shall refer to the boat throughout as "Alchemist".

2. There was no dispute about the facts.

3. Alchemist was built by Branson Boats of Peterborough between 28 January and 16 May 2000. By the latter date she had a steering system and rudder, an internal floor, was painted inside and out, had deck bollards and all her welds below the waterline had been tested to ensure that they were watertight. This was to guarantee that if she needed to be launched on the day she left the workshop she would not sink. She was to be moved to Weedon and the preferred method of transport was on a lorry, but there were two points, one a set of traffic lights, and the other the narrow gates into the new boatyard at Weedon where the access was extremely narrow, so that if the lorry could not go through these narrow points she would have had to be towed

along the Grand Union Canal to a better access point. In the event, it was possible to transport her by lorry.

4. I was provided with a copy of the contract between the Appellant and Branson Boats for the supply of Alchemist. It has an overall length of 50 feet and a 12 foot beam. On 16 May 2000 it had a gross tonnage of 19.8 tons, as measured in accordance with the formula in Customs Notice 744(c), Appendix A.

5. The Appellants added windows, 3 hatches, engine and stern gear before the boat left Bransons' workshop and after it had been moved to Weedon they started living aboard and modifying her to provide an improved level of comfort and general specification. I was provided with a set of 24 photographs showing the various stages of interior construction and furnishing. Alchemist is now based at Emsworth on the South Coast and the Appellants are still living on her and continuing with the work.

6. Since Alchemist was handed over to the Appellants by Branson floats they have had confusing and, to some extent, contradictory advice from various VAT offices of the Commissioners about the correct treatment for VAT purposes of a number of supplies made to them. I turn, therefore, to the relevant statutory provisions.

7. Supplies which are to be zero rated are specified in Schedule 8 of the VAT Act 1994 and Group 8 is headed "Transport".

8. Item 1 of Group 8 is:

(i) The supply, repair or maintenance of a qualifying ship or the modification or conversion of any such ship provided that when so modified or converted it will remain a qualifying ship.

(ii)Paragraph 2A - the supply of parts and equipment, of a kind ordinarily installed or incorporated in, and to be installed, or incorporated in -

a) the propulsion, navigation or communication systems; or

b) the general structure,

of a qualifying ship or, as the case may be, aircraft.

(iii) 2B. The supply of lifejackets, life rafts, smoke hoods and similar safety equipment for use in a qualifying ship or, as the case may be, aircraft."

9. Group 9 of Schedule 8 which is headed "Caravans and Houseboats" includes as item 2:

"Houseboats being boats or other floating decked structures designed or adapted for use solely as places of permanent habitation and not having means of or capable of being readily adapted for, self-propulsion."

10. Note A1 to Group 8 states:

(a) A "qualifying ship" is any ship of a gross tonnage of not less than 15 tons which is neither designed nor adapted for use for recreation or pleasure."

11. When the shell of Alchemist was supplied by Branson Boats to the

Appellants its gross tonnage was 19.8 tons. It has not significantly changed since.

12. On the question whether Alchemist has been designed or adapted for use for recreation or pleasure the Appellants referred to Tribunal Decision 11736, Mrs D G Everett and the London Tideway Harbour Co Ltd and the Commissioners of Customs & Excise where the Tribunal decided that works of maintenance, repair and refurbishment to two Dutch flat bottomed barges, which essentially converted what had been working barges into homes or places of permanent habitation were zero-rated because the two vessels in question were not “ships designed or adapted for use for recreation or pleasure”. I accept that that Decision is equally applicable to Alchemist.

13. Alchemist is clearly not a “houseboat” as defined in Item 2 of Group 9 because it does have its own means of self propulsion.

14. It appears to me that the questions for decision in this Appeal are:

(i) At what stage of its construction and fitting out did Alchemist become or will it become a “qualifying ship” and

(ii) What is the proper VAT treatment of supplies made to the Appellants for the fitting out and equipping of Alchemist?

15. The final invoice from Branson Boats amounted to £33,518 and the question is whether that supply is standard rated or zero rated. Are parts and equipment supplied to the Appellants after that date standard rated or zero rated?

16. Mr M^cKay submitted that at the time Alchemist left Branson Boats it was not a qualifying ship. At that date it was a shell, into which frames had been welded and side plates added. The bow had been completed and the steering tiller and rudder had been installed. It had an engine but it was not in working order.

17. The Appellants lived on board Alchemist from 16 May 2000 when it left Branson Boats and two of the photographs show the living area at that time. The Appellants are still living on Alchemist now that it is based at Emsworth and are continuing to fit it out. They do not anticipate completion, i.e. sea going, until 2002. Notwithstanding that, the vessel would float if it was put in the water now.

18. Mr M^cKay submitted that the intention of zero-rating is to cover the supply of a complete ship, i.e. one that is fully equipped and capable of going to sea.

19. One problem with this interpretation is, as Mr Tilson pointed out, that shipyards commonly launch ships as shells. The QE2 was, Mr Tilson said, launched as a shell. He did not agree that, to qualify for zero-rating, the vessel has to be complete and working. It could, as mentioned above, be put in the water now in an incomplete state and work would continue on its fitting out. He referred to the Tribunal decision in D M & P J Roberts v. The Commissioners of Customs & Excise (Decision No. 7516) which was concerned with VAT on mooring fees for a yacht, the Irene Ann. The Appellants had owned, and lived aboard the yacht, moored at a quay in Newport, Isle of Wight, which they had bought when it was little more than a hull with decking and had moved aboard and lived there ever since. There was no

propeller and no electrical system and it was not capable of self propulsion. The Appellants had bought the yacht with the object of making it seaworthy and sailing it and their efforts at restoring it were directed to that end. The engine could have been brought into use within 3-4 weeks and a set of sails could have been made within a week or two. The Tribunal held that the Irene Ann was properly described as a “ship boat or vessel”, there being no requirement that the vessel must be capable of use for navigation at the relevant time. It was not a houseboat.

20. Mr Tilson also referred to the *Oxford Companion to Ships and the Sea* which cites numerous definitions of the word “ship” used in different statutes, particularly the Merchant Shipping Acts. The 1854 Act, for example, defines “ship” as including “every description of vessel used in navigation not propelled by oars” and in *The Mac* (1882) 7PD 126 Lord Coleridge CS held that this included a hopper barge.

21. These splendid quotations did not assist me a great deal in deciding whether, or when, the Alchemist became a “qualifying ship”. Item 1 of Group 8 requires that the ship be the supply of a qualifying ship or the modification or conversion of any such ship, provided that when so modified or converted, it would remain a qualifying ship. Therefore, as Mr M^cKay submitted, the legislation is referring to a complete ship, i.e. one that is fully equipped and capable of self propulsion. In this Case, there is no question of self supply, because the Appellants are not in business and are not registered for VAT. The ship must be complete in the first place. A complete ship may be supplied by a VAT registered trader and will be zero rated. A complete ship may be repaired or maintained or modified or converted and that work will be zero rated provided that, once modified or converted, it will remain a qualifying ship. That still leaves us with the question as to when the Alchemist could be regarded as a completed vessel, i.e. a qualifying ship. I agree with the review officer, Mr J D Powley, who stated in his letter of 29 November 2000 that a partly completed vessel, e.g. hull, or hull and deck, or hull deck and superstructure, is not a completed vessel for the purposes of Item 1 of Group 8. The hull, or body or frame or shell of a ship is not capable of being treated as a complete vessel. Two mouldings fixed together do not make a ship; they are just two parts fixed together making one larger part of a vessel which was subsequently completed.

22. As Mr Powley stated in that letter the Appellants have been partially fulfilling the role of a shipbuilder. When a shipbuilder purchases materials for the use of the construction of a ship from another UK business he will be charged VAT. This tax is deductible in accordance with the normal rules. It is only the supply of a completely fitted ship that is zero rated. The Appellants are not intending to sell Alchemist by way of business nor to use it for making taxable supplies. Therefore, they cannot register for VAT and cannot reclaim the VAT incurred on the purchases. Section 35 of the VAT Act makes provision for zero rating for DIY house-builders, but there is no similar provision for DIY boat-builders.

23. Once the vessel is fully equipped and seaworthy, Mr Powley wrote, it may be considered to fall within Item I of Group 8 and the supply of certain additional parts and equipment may be zero rated under Item 2A subject to the qualifying criteria of that Item as explained in Section 4 of Notice 744C. Similarly, modifications and conversions to a qualifying ship would be eligible for zero rating.

24. So when does a ship become a qualifying ship? In my view, subject to compliance with note A1(a) a ship qualifies from the time when it is seaworthy or, if it is not designed to go to sea, when it is fit to navigate the waterways for which it is designed.

25. It follows that all items and services purchased by the Appellants up to the point where Alchemist can be regarded as seaworthy will have been, or should have been, standard rated.

26. The appeal is dismissed and there will be no order as to costs.