



*Value Added Tax – Reduced rate supply – Energy saving materials – Insulation for roofs – Polycarbonate panels for conservatories – Panels supplied to create new roof – Panels supplied to replace existing panels – Whether energy saving materials comprising insulation for roofs – Appeal allowed – VATA 1994 Schedule 7A Group 2*

[2014] UKUT 0202 (TCC)

**IN THE UPPER TRIBUNAL**

**Appeal no: FTC/92/2013**

**TAX AND CHANCERY CHAMBER**

**THE COMMISSIONERS FOR HER MAJESTY’S REVENUE & CUSTOMS**

**-and-**

**PINEVALE LIMITED**

**TRIBUNAL: Mr Justice David Richards**

**Sitting in public in London on 20 March 2014**

**Peter Mantle, counsel, instructed by the Solicitor to HM Revenue and Customs for the Appellants**

**The Respondent did not appear and was not represented**

1. Value added tax is payable at the reduced rate of 5% on “energy-saving materials” falling within Group 2 of schedule 7A to the Value Added Tax Act 1994 (VATA 1994). The issue on this appeal is whether roof panels manufactured and installed by Pinevale Limited (Pinevale) in conservatories qualified as energy-saving materials, as defined.

2. The First-tier Tribunal (Sir Stephen Oliver QC) (F-tT) allowed Pinevale's appeal against the decision of HMRC that supplies of polycarbonate roof panels and radiation strips for conservatory roofs did not qualify for the reduced rate of VAT. The F-tT gave permission to appeal. HMRC accept the decision so far as it relates to radiation strips but appeal against the decision that the roof panels qualified for VAT at the reduced rate.
3. Pinevale was represented before the F-tT but has since gone into creditors' voluntary winding-up. The liquidator informed the Upper Tribunal that Pinevale did not wish to make representations on the appeal and it was not represented at the hearing of the appeal.
4. The roof panels in issue are used to form the roof of a conservatory, either (as Pinevale considered desirable for achieving maximum effect) replacing or constituting the entire roof, or replacing parts of an existing roof. Their purpose is to achieve much higher levels of insulation than would be the case with a conventional conservatory roof, including a double-glazed roof.
5. The panels are described in the Decision of the F-tT at [4]:

*“The principal Product, the Insupolycarbonate Roofing Panel, consists of polycarbonate materials comprising four or more cells. Polycarbonate does not have the structural rigidity for use on its own as a panel; the Product is therefore manufactured as a cellular structure and designed to fit into an aluminium frame. The frame holds cells with thicknesses of either 25mm or 35mm. The thicker the panel the higher is the insulation performance. The insulation panels are designed to admit daylight into the conservatory. A “thermal break” consisting of opaque insulating material may be attached to the aluminium framework structure to reduce heat loss due to conduction.”*

6. Section 29A VATA 1994 provides that VAT on any supply that is of a description for the time being specified in schedule 7A shall be charged at the rate of 5%.
7. Schedule 7A contains a number of groups of supplies of services or materials which attract the reduced rate of VAT. Group 2, headed “Installation of Energy-Saving Materials”, contains two items, of which the second is directly relevant to the present case:

*“1. Supplies of services of installing energy-saving materials in –*

*(a) residential accommodation, or*

*(b) a building intended for use solely for a relevant charitable purpose.*

*2. Supplies of energy-saving materials by a person who installs those materials in –*

*(a) residential accommodation, or*

*(b) a building intended for use solely for a relevant charitable purpose.*

8. Group 2 and other groups in schedule 7A contain notes which, by virtue of section 96 VATA 1994, apply for the interpretation of the group. Note 1, of which note 1(a) is directly relevant, provides as follows:

*“For the purposes of this Group “energy-saving materials” means any of the following –*

*(a) insulation for walls, floors, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings;*

*(b) draught stripping for windows and doors;*

*(c) central heating system controls (including thermostatic radiator valves);*

*(d) hot water system controls;*

*(e) solar panels;*

*(f) wind turbines;*

*(g) water turbines;*

*(h) ground source heat pumps;*

*(i) air source heat pumps;*

*(j) micro combined heat and power units;*

*(k) boilers designed to be fuelled solely by wood, straw or similar vegetal matter.”*

9. Pinevale’s case before the F-tT, as summarised in the Decision at [16], was that the panels were “insulation for roofs” because, as the evidence demonstrated, they provided insulation by forming a barrier to reduce or stop heat loss or, in summer, heat gain. This resulted in energy-saving, whether on heating or air conditioning.
10. HMRC’s case before the F-tT, and on this appeal, is that the panels are not “insulation for roofs” but are the roof itself. So, if an entire existing roof is replaced, the panels constitute the

new roof, not just insulation for a roof. Likewise, the replacement of individual panels with Pinevale's panels was the supply of new roof panels, not the supply of insulation for a roof.

11. The F-tT identified the relevant legal questions at [18] as being:

*"The question of law is whether Pinevale's supplies are of, or relate to, energy-saving materials that are "insulation for....roofs". The supplies have to satisfy a single composite test that has two separate ingredients. First, can the relevant Product properly be classed as an energy-saving material? That is the overriding attribute that it must possess whatever the purpose or use to which it is designed to be put. The second test, relevant to the present issue, relates to the purpose or use for which the material is supplied. That test is whether the relevant material is "insulation for ... roofs?" Failure of either test disqualifies the supply from the reduced rate of VAT."*

12. As to the first question posed by the Tribunal, it was satisfied on the evidence that the panels were energy-saving.

13. As to the second question posed by the Tribunal it noted in [22]-[23] that Note 1(a) specifically identified certain parts of a structure and certain fittings to the structure as areas for relief. The Tribunal said that the function of the word "for" in Note 1(a) was:

*"To prescribe the purpose for which or the use to which the relevant material is to be put. The word "for" limits the scope of insulating materials that are to qualify for the reduced rate. Insulation for windows or doors, for example, has been left out of the class covered by Note 1(a); it qualifies only if it is "draught stripping" within Note 1(b)."*

So long as the material is "energy-saving" and is supplied, for example, for insulating roofs or lofts the supply qualifies for the reduced rate.

14. The conclusion in favour of Pinevale was expressed in [25]-[26]:

*"25. HMRC are, in my view, adopting too constrained a meaning of "insulation for" when they seek to exclude the situation where the whole roof structure is replaced or where individual panels are. It is in my view, significant that HMRC have identified no form of energy-saving material that is ordinarily attached to an existing but energy-inefficient roof. I accept that a second layer of glass (when installed to create a double glazed roof) may function as energy saving, but the glass itself is not energy saving material."*

*26. The evidence summarised above shows that Pinevale's market for the Product is customers who want to have the Product installed in the construction or repair of roofing insulated with energy-saving materials. The Product is designed for no other purpose. Those points further indicate that the Product is "insulation for roofs". That expression can fairly be read as covering insulation where the Product functions as the roof and thereby keeps the inside of the conservatory wind and watertight. It is just as much "insulation for roofs" as where it is supplied to be attached to an existing roof of a building."*

15. In my judgment this conclusion involves an error in the interpretation of Note 1(a).
16. As counsel for HMRC submitted, while the common feature of the goods listed in Note 1 is that they can be expected to produce energy-savings once installed in residential accommodation, Note 1 provides an exhaustive definition of “energy-saving materials” for the purposes of items 1 and 2 of Group 2. Rather than making the reduced rate available to all types of goods with energy-saving properties that could be installed in homes certain types of goods are specified as eligible for the reduced rate.
17. There is a distinction between Note 1(a), which specifies insulation “for walls, floor, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings” and paragraphs (c) to (j) which specify particular products such as central heating system controls or solar panels. A material which is insulation for a roof is not the same thing as the roof itself. It presupposes that there is a roof to which the insulating material is applied. If the intention had been to apply the reduced rate of VAT to energy-efficient roofs or walls, this could have been specified, just as more generally building materials are specified in schedule 8. The same point can be made in respect of water tanks. It is not energy-efficient water tanks, such as those which incorporate insulation as part of their construction, which attract the reduced rate of VAT, but insulation for water tanks. Again it presupposes that there is a water tank to which an insulating material is attached or applied.
18. In [25] of its Decision, the Tribunal considered it to be significant that HMRC had not identified any form of energy-saving material that is ordinarily attached to an existing but energy-inefficient roof. While HMRC’s representative at the hearing before the F-tT did not have the information to deal with this point, it is in fact clear that there are many such products available generally in the market.
19. The error, in my judgment, made by the Tribunal was to construe “insulation for roofs” as extending to the roof itself when it has energy-saving properties, rather than being confined to insulating materials attached or applied to a roof.
20. I therefore allow the appeal by HMRC.

**Mr Justice David Richards**

**UPPER TRIBUNAL**

**RELEASE DATE: 07 MAY 2014**