[2018] UKFTT 374 (TC)

TC06588

Appeal number: TC/2017/02648

APPLICATION TO MAKE A LATE APPEAL – delay of about two months due to director overlooking or forgetting assessment – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

SAFINA LONDON LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE BARBARA MOSEDALE

Sitting in public at Taylor House, Rosebery Avenue, London on 3 May 2018

Mr L Kazakos, Counsel, instructed by Alexander Whyatt, for the Appellant

Ms I MacCardle, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The appellant seeks leave of the Tribunal to appeal out of time an excise duty assessment of £408,470.

Background to the application

2. The assessment was dated 20 December 2016. It was addressed to the appellant at an address I will refer to as the 'Egham' address.

3. The assessing officer, Mr Brolly, then wrote to the appellant on 10 January 2017 at an address I will refer to as the 'Hounslow' address. That letter referred to the excise assessment; it also enclosed a copy of the assessment; but it did not enclose a copy of the letter of 20 December 2016 which had accompanied the excise duty assessment.

4. The letter of 20 December 2016 had set out the appellant's right to request a review or lodge an appeal; the letter of 10 January 2017 and its enclosures did not.

5. The notice of appeal to the Tribunal was lodged on 27 March 2017.

6. On 19 April 2017, the appellant applied to HMRC for the appeal to be allowed to proceed without payment of the tax on the grounds of hardship. On 29 June 2017, HMRC accepted the application in these terms:

> '…we agree to the appeal proceeding notwithstanding the fact that the sums have not yet been paid.'

7. On 12 August 2017, the Tribunal wrote to the appellant stating that:

> '…[HMRC] have now informed the Tribunal that the outcome of your hardship application was successful. This appeal has now been assigned to proceed under the 'standard' category. [HMRC] have 60 days from the date of this letter to provide you and the Tribunal with a statement of case…..'

8. The statement of case was therefore due on 11 October 2017; on 6 October, HMRC filed a notice of objection to the appeal being lodged out of time.

The evidence

9. Neither party relied on the oral evidence of any witness. The appellant filed two witness statements. The first was made by Mr Matthew Whyatt of the appellant's solicitors and the contents of it did not appear to be in dispute. I accept its statements of fact which were within Mr Whyatt's own knowledge but not his expressions of opinion (eg Mr Whyatt's speculation on HMRC's motives). He also gave hearsay evidence, repeating what Mr Dhariwal (the appellant's director) had told him about why there had been delay. Why I accept Mr Wyatt's evidence of what he was told, I do not put weight on it as evidence for why the delay occurred: Mr Dhariwal could

have attended the hearing to explain that in person and I was not given an explanation for why he did not attend.

10. The second witness statement was by Mr Christopher Mann. He was a consultant who had acted for the appellant. It stated that he was unaware of the excise duty assessment on the appellant before (approximately) 10 March 2017. I did not understand this evidence to be in dispute.

11. I also had the benefit of various documents, the authenticity of none of which appeared to be in dispute, even if reliability of statements made in the documents was in dispute.

The law

12. The exercise of the Tribunal's discretion in an application by a party to be allowed to lodge an appeal out of time is very similar to that in an application to be relieved from the effect of a sanction.

13. I was referred to *Denton* [2014] EWCA Civ 906, which was approved by the Supreme Court in *BPP* [2017] UKSC 55 where it said the Tribunals should follow a 'similar' approach to compliance to that in the courts. In *Denton* the Court of Appeal had set out a three stage approach when considering relief from sanctions:

(1) The first stage is to identify and assess the seriousness and significance of the failure to comply;

(2) The second stage is to consider why the failure occurred;

(3) The third is to consider all the circumstances of the case.

14. I was also referred to *Data Select* [2012] UKUT 187 (TCC) where the court said that the Tribunal should, when considering whether to disapply a time-limit, consider all the circumstances of the case and that would mean considering:

(1) What is the purpose of the time limit?

(2) How long was the delay?

(3) Is there a good explanation for the delay?

(4) What will be the consequences for the parties of the extension of time?

(5) What will be the consequences for the parties of a refusal to extent time?

15. As was commented by the Upper Tribunal in *Romasave (Property Services) Limited* [2015] UKUT 254 at [89] there is no real difference between these two tests. This must be so because in *Denton*, the Judge accepted that the court would move on from the first stage test to the second stage test in all cases other than where breach was not serious or significant [28], and that having done so the seriousness and significance of the breach would be factors considered in the balancing exercise.

16. None of these cases concerned an application to lodge new proceedings out of time but, it seems to me, that the same questions set out in *Data Select* arise. I will

consider the purpose of the time limit, the reason it was not met, and all the circumstances of the case before conducting a balancing exercise to decide whether or not it is in the interests of justice to admit the appeal late.

The appellant's case

17. The appellant, in summary, put its case on two grounds:

(1) That in all the circumstances, its delay should be excused; the delay was not long and arose from the director's inexperience and naivety.

(2) In any event, statements made by HMRC and the Tribunal after the lodging of the appeal gave rise to legitimate expectation that no objection would be taken to the appeal being lodged out of time.

The purpose of the time limit

18. The purpose of the time limit is to provide finality. HMRC need to know whether an assessment is enforceable, or alternatively, whether it is being challenged. Parliament has therefore given taxpayers 30 days in which to notify an appeal. If no appeal is received, HMRC is entitled to enforce the assessment, as it appears they attempted to do in this case.

19. The appellant has the burden of persuading the Tribunal that it should not be kept to the 30 day time limit but should be allowed to challenge the assessment out of time. So I go on to consider the length of the delay, the reasons for it, and all the circumstances of the case.

The length of the delay

20. When establishing the length of the delay, I have to know the date of the assessment.

21. HMRC's position was that the assessment made by Officer Brolly was made on, and notified to the appellant by letter dated, 20 December 2016. It was sent to the Egham address which was and remains the address notified by the appellant to HMRC as its address for correspondence. It was the address used by the appellant in March 2017 when it lodged these proceedings with the tribunal.

22. The appellant did not suggest that the assessment was improperly served. It was its case that, nevertheless, it was not seen by the appellant's director. I did not have his evidence and so I was unable to accept that the assessment was either not received or received but not read.

23. In any event, the documents before the Tribunal tended to indicate that Mr Dhariwal ought to have received it. An email chain between Mr Dhariwal (the director of the appellant) and an HMRC VAT officer shows the officer was in November 2016 trying to arrange a visit to the appellant's premises. On 21

November 2016, Mr Dhariwal replied to say that he was in the middle of 'moving units' and gave the Hounslow address as the new one.

24. On 6 January, that officer notified Officer Brolly of the intended new address. This led Mr Brolly to re-send the notice of assessment to the Hounslow address on 10 January, as referred to above at §3.

25. On 13 January 2017, Mr Mann wrote to the VAT officer complaining that HMRC had left post at an 'address unconnected to our client's business' although also accepting that the appellant was on 'good terms' with the premises' landlord and therefore had actually received the post. Mr Mann's letter stated:

> 'HMRC are fully aware that our client's PPOB is at [Egham address]….'

26. It appears from a letter written by Mr Mann on 2 February 2017 that the address to which the correspondence referred to in his previous letters was sent was the Hounslow address as he said:

> 'whilst our client was considering a change of units this did not actually occur and therefore a notification [to HMRC of a change of address] was not required.'

27. In conclusion, I find that the appellant's place of business remained throughout the relevant period at the Egham address. The notice of assessment was properly served on 20 December 2016. The appeal was therefore lodged 67 days late as it should have been lodged on 19 January 2017, which is 30 days after 20 December 2016. That is a delay of over two months and is a serious delay as it is over twice the length of time permitted for the appeal to be lodged.

28. The appellant therefore needs to give an explanation for why no appeal was lodged by 19 January 2017 and in particular why it was not lodged until 27 March 2017.

The explanation for the delay

29. It is the appellant's case, accepted by HMRC, that Mr Dhariwal was away from the UK on holiday from the first week of December until 3 January 2017. He was therefore not in the UK when the assessment was posted to the Egham address. No explanation is provided for the appellant's implied case that Mr Dhariwal did not read the assessment on his return on 3 January.

30. The appellant does accept that Mr Dhariwal become aware of the assessment at some point in January 2017; the appellant's position is that he forgot about the assessment and did not contact an advisor about it until late February. Solicitors were instructed in early March 2017; in turn they instructed counsel to draft the notice of appeal but he failed to do so for personal reasons; new counsel was instructed on 24 March 2017 and the appeal submitted by 27 March 2017. It is also the appellant's position that its director was not aware that the assessment had to be appealed within

any set time period as the letter of 10 January had not, it is accepted, referred to any time-limits.

31. I will deal with the appellant's explanation by breaking it down.

Was the appellant unaware of the time limit?

32. It is implicit in the appellant's case that the appellant was unaware of the assessment until it received the letter of 10 January. The letter of 10 January did not contain the time limit for appealing the assessment as it contained a copy of the assessment but not of the accompanying letter of 20 December.

33. HMRC do not accept that being on holiday is a good reason for the delay; they do not accept that the appellant was not aware of the notice of assessment before 10 January.

34. I agree that being on holiday is not a good reason for the delay. It appears that Mr Dhaliwal was away for about a month and (it is implicit in the appellant's case) did not appoint anyone to oversee the company's affairs in his absence. I do not think this is a good excuse but it does not really matter as the director returned on 3 January, long before the due date for lodging the appeal (19 January 2017).

35. The significant point is that even though he was on holiday when the assessment would have arrived in the normal course of the post, I had no evidence that the assessment was not received at the Egham address and no explanation for the appellant's implied case that Mr Dhaliwal did not read it on his return. His absence on holiday is no explanation for why the appeal was not lodged on the due date.

36. I am also therefore unable to accept that the appellant was unaware of the time limit. Firstly, I had no evidence from Mr Dhariwal so I do not know what he was or was not aware of. Secondly, the letter of 20 December 2016 did contain the time limits and I was given no evidence that this letter was not received. Mr Dhaliwal has not proved he was unaware of the time limit.

Is forgetting about the assessment a good reason for delay?

37. Mr Whyatt said Mr Dhariwal told him that 'struggles of the business' had taken precedence in Mr Dhariwal's mind over the duty assessment and this led him to overlook it. While this is only hearsay, HMRC appear prepared to accept that Mr Dhariwal forgot or overlooked the assessment: they just do not accept it was a good reason for doing nothing.

38. And I agree. I do not think any reasonable person acting responsibly could overlook or forget an assessment for over £400K. It is not a good reason for the delay.

39. As Ms McArdle pointed out, at the time the appellant company had at least one tax adviser acting on his behalf: as I have said, Mr Mann of Tiberius Solutions Ltd

wrote to HMRC on 13 January 2017 complaining on behalf of the appellant about an unannounced site visit at the Hounslow address which the writer described as a 'bizarre hoax'; he wrote again to HMRC on the appellant's behalf on 2 February 2017. It is apparent from Mr Mann's letters that the appellant had handed communications from HMRC to his advisers, but as there is no mention of the assessment, it appears Mr Dhaliwal did not consult Tiberius about it. And that is consistent with Mr Mann's evidence (§10). I was given no explanation of why Mr Dhaliwal did not consult his tax advisers about a £400,000 assessment from HMRC, but did consult his advisers over an unannounced site visit at premises the company did not occupy. All that can be inferred is that Mr Dhaliwal did not tell his advisers everything. Indeed, a comparison between the two letters indicates that in the first letter, Mr Mann was unaware that his client had informed HMRC the previous month that the business would be moving to the Hounslow address (see §23) and this was why he had referred to HMRC's site visit as a 'bizarre hoax'.

40. I do not accept that Mr Dhaliwal was naïve or unaware of the importance of the assessment: he already employed a tax adviser and was clearly aware of the importance of a site visit and the threat of VAT de-registration. In any event, I do not think any reasonable person acting responsibly could fail to appreciate the significance of an assessment for over £400K. Forgetting the assessment or not understanding its significance is not a good reason for the delay.

Reason for delay from 23 February to 15 March 2017

41. Mr Whyatt explains that Mr Dhariwal contacted him for advice about the assessment on 23 February 2017; his firm despatched a letter of engagement that day or the next and were (quite properly) unable to act until the letter was returned signed. They did not receive it back until 15 March.

42. Mr Whyatt's hearsay evidence was that Mr Dhariwal was under the mistaken impression for three weeks that Alexander Whyatt was acting on this behalf in this appeal as he had not appreciated the need to sign and return the engagement letter. I do not accept that evidence, as I was given no reason why Mr Dhariwal did not attend to give his reasons in his own words; so I have no explanation for this delay of three weeks.

43. In any event, even if I accepted the hearsay evidence, I do not consider it a good reason for delay. It was not Mr Whyatt's case that his oral advice or letter to his client was unclear or misleading. So Mr Dhariwal should have read and returned the letter of engagement much more promptly if he was desirous of pursuing this appeal with the help of Mr Whyatt and I was not given a good reason why he did not.

Reason for delay from 15 March to 24 March 2017

44. It appears Alexander Whyatt acted with expedition, instructing counsel to draft the notice of appeal on 15 March, as soon as they had received Mr Dhariwal's written instructions. Counsel, however, despite being told it was urgent, did not deal with it urgently. On 24 March, counsel's clerk returned the papers to Alexander Whyatt on

the basis that for personal reasons (sudden illness and death of someone close), counsel was unable to deal with them.

45. HMRC do not accept that this delay of 9 days is adequately explained. They say that delay by the representative is the same as delay by the litigant and moreover there was no explanation for why Alexander Whyatt had not either drafted and lodged the notice of appeal itself nor chased counsel over the matter.

46. I agree that delay by the representative is the same as delay by the litigant; however, it seems to me that the sudden illness and death of someone close is a good reason for anyone to delay in doing what should be done. In the circumstances, there seems to me to be a good reason for the delay of nine days. Moreover, it was reasonable for Alexander Whyatt, having instructed counsel, to wait a short period to allow counsel to carry out the instructions.

47. At the same time, I accept that counsel was not the appellant, and the appellant needed to take urgent steps to appoint new representatives who were in a position to help with expedition. And Alexander Whyatt did that on the same day as the papers were returned, and the notice of appeal was filed three days later. I do not think they can be criticised for a delay of a mere three days in drawing up the notice of appeal.

Conclusion

48. I was not given a good reason for the delay from 19 January 2017 (the last day on which the appeal could have been lodged in time) to 14 March 2017. That was a delay of very nearly two months without any adequate explanation.

49. I consider that there was a good reason for the delay from 15 March to the date the papers were lodged.

The consequences for the appellant

50. HMRC have accepted that payment of the amount assessed would cause the appellant hardship; the appellant's case is that it would cause it insolvency. Mr Wyatt's unchallenged evidence was that HMRC had brought winding up proceedings against the appellant in early March 2017 over the unpaid excise duty debt (in respect of which, at that date, no appeal had been lodged). However, this is simply evidence that the debt was unpaid: it is not evidence the appellant could not pay it.

51. In so far as the appellant's case is that the assessment will cause insolvency, it appeared that it had stopped trading in any event. The parties appeared agreed that it had been de-registered for VAT and refused an AWRS licence. Instructions to Mr Kazakos were that the company's trading was 'paused'. So it appears it is already no longer a going concern. Whether or not the assessment is appealed will not change that.

52. The appellant has since been assessed for VAT; it appealed the VAT assessment timeously. There is factual overlap between the appeals. However, I do not consider

that relevant because the VAT appeal can go ahead with or without the excise appeal. But the appellant's concern is that if it is unable to proceed with the excise appeal it might be made insolvent before the VAT appeal has been determined: so being unable to proceed with the excise appeal may mean that it is unable to proceed with the VAT appeal. I don't accept that; apart from having no evidence that it will be made insolvent if it cannot proceed with the excise appeal, even if it does become insolvent, it will up to the insolvency practitioner to decide on whether to proceed with the VAT appeal.

53. I was not addressed by either party on the prospects of success of the excise duty appeal and so I proceed on the basis that the case is arguable. I accept therefore that the consequences of not being able to go ahead with the excise appeal will be very serious for the appellant as it will lose the right to make an arguable case that it is not liable to the £400K assessment. I do not accept that it has shown in addition that it will become insolvent and that it will prevent it pursuing its VAT appeal.

The consequences for HMRC

54. Mr Kazakos pointed out that the consequences for HMRC are less severe if the appeal goes ahead than the consequences for the appellant if it does not. I agree with that: if the appeal ultimately goes ahead and HMRC succeed in defending it, their loss is the cost of defending it that they would not otherwise have incurred. If the appellant could win the appeal, the loss to it of the appeal not going ahead is the amount of the assessment.

55. HMRC say that the lateness of the appeal is detrimental to them because the assessing officer has now left the employment of HMRC. His evidence will be of some relevance as there is a challenge that the assessment was not to his best judgment. Mr Kazakos doubts that this prejudice to HMRC results from the lateness of the appeal because he thinks Mr Brolly's leaving would probably have occurred before the appeal could have been heard even if it had not been lodged late. And I agree with him.

56. In summary, I agree with Mr Kazakos that the potential consequences for HMRC are less severe if the appeal goes ahead than the potential consequences for the appellant if it does not.

Relevance of alleged delays by HMRC/Tribunal

57. The appellant complained it took HMRC six months after the appeal was lodged before they took a point about its lateness. It considers that this gave rise to some kind of legitimate expectation, suggesting that it continued to pursue these proceedings in the belief they were on foot.

Are post-submission events relevant?

58. I am required to consider all relevant circumstances before exercising my discretion on whether or not to admit this appeal out of time. Are events which occur after the submission of the notice of appeal relevant to the exercise of my discretion?

59. It seems to me that they may be relevant to the exercise of my discretion. While it is impossible for them to be the cause of the delay, they might in some circumstances influence the exercise of my discretion.

60. I am inclined to agree with the appellant that in some circumstances a representation by HMRC after the date a late appeal was submitted that they would accept the appeal out of time might be a reason for exercising my discretion in favour of the appellant, particularly if the appellant had expended money it would not otherwise have spent in reliance on that representation.

61. Here, however, I am unable to find either that HMRC did make such a representation or that the appellant relied on such a representation to its detriment.

Was dealing with the hardship application a representation?

62. The appellant's case seems to be that by considering and accepting hardship, HMRC were implicitly representing that they did not take any objection to the appeal being late. But for the appellant to be right on this, it would have to be the law that the application for the appeal to be accepted out of time should have been dealt with before the hardship application.

63. Rule 20 permits an appeal to be notified to the Tribunal which includes a 'request' for permission to make a late appeal (Rule 20(4)(a)) but provides that 'unless the Tribunal gives such permission, the Tribunal must not admit the appeal'. It referred to the document in which such an application is made as a 'notice of appeal'.

64. So a late notice of appeal is strictly merely an application; it is not an appeal until admitted. It is 'proceedings' before the Tribunal but not an appeal. But the document which starts the proceedings is a notice of appeal.

65. Rule 22 provides that when starting '*proceedings'* where tax must be paid before the *appeal* can proceed (rule 22(1)), the notice of appeal must include stated information (such as whether an application to HMRC for relief has been made) and the Tribunal 'must stay the *proceedings'* until the matter of hardship is determined.

66. The significance of the use of the word 'proceedings' in Rule 22 is that it is the entire matter before the Tribunal that is stayed. If the legislation had simply said that the 'appeal' was stayed (as it could have done) then that would imply that there was no stay under Rule 22 until an appeal was admitted to the Tribunal. If that was how it was worded, that would mean that the tribunal should determine the late appeal application under Rule 20(4) before it determined the matter of hardship under Rule 22.

67. But that is not what Rule 22 provides. It makes the distinction between 'appeal' and 'proceedings' and stays the entire 'proceedings' and not just the 'appeal' where a hardship application has been made. Therefore, it stays the application for an extension of time because that is the 'proceedings' before the Tribunal immediately after the notice of appeal was lodged.

68. Therefore, it seems to me that a notice of appeal which (a) includes an application to be admitted late and (b) is in respect of an underlying appeal which cannot be admitted unless the tax is paid or hardship allowed is a valid notice of appeal which starts *proceedings* – albeit not an appeal - in the Tribunal. Rule 22 requires those proceedings to be stayed pending hardship; if hardship is determined in the appellant's favour or the tax is paid, the proceedings move to the next stage which is determination of the application for a time extension. If that is determined in the appellant's favour, the application becomes an appeal admitted to the Tribunal.

69. That interpretation seems consistent with Parliament's intention which is clearly that the tax must be paid (except in cases of hardship) before a taxpayer can take proceedings, in order to discourage legal challenges to assessments being used simply as a delaying tactic. Therefore, whether or not the appeal was late, it would be consistent with Parliament's intention that the tax has to be paid at the outset of proceedings. So hardship must be determined before the application for a late appeal to be admitted.

70. And that process was followed in this case. The proceedings initiated by the appellant's notice of appeal were stayed pending the appellant's application for hardship. Once that was determined in the appellant's favour, the Tribunal had to move on to consider whether to admit the appeal out of time.

71. In conclusion, by dealing with the hardship application before the application for the appeal to be admitted late, HMRC made no representation that it would not object to the appeal being admitted out of time. It was merely dealing with matters in the order it was required to do by the Rules and by the Tribunal.

Did the letter amount to a representation?

72. HMRC's letter informing the appellant of its decision on hardship included the phrase:

> '…we agree to the appeal proceeding notwithstanding the fact that the sums have not yet been paid.'

73. The appellant suggested that this was a representation that the appeal could proceed: I do not agree. It was not, on the face of it, anything other than a representation that the appeal could proceed notwithstanding the non-payment of the tax. It was not a representation that HMRC agreed to the appeal proceeding notwithstanding the fact it was lodged late.

74. It is true that it refers to the 'appeal' proceeding, but it is qualified by the second part of the sentence which refers only to the payment of tax. It could not reasonably

have been relied on by the appellant as a representation HMRC did not object to the appeal being out of time.

Did the delay amount to a representation?

75. The notice of appeal was submitted on 27 March and HMRC did not object to its lateness until 6 October. The first part of that delay was while the appellant applied for, and HMRC granted, hardship. Hardship was granted on 29 June; the objection to the appeal being out of time was not made until 6 Oct, over three months later.

76. During that time HMRC did not make any communications about the appeal; it wrote no letters about the appeal nor did it file any documents. Doing nothing is not, in these circumstances, a representation.

77. In any event, I do not think HMRC can be criticised for the delay. The proceedings were with the Tribunal, and the Tribunal needed to issue appropriate directions. It took the Tribunal some 6 weeks to do this: on 12 August, it directed HMRC to produce their statement of case in 60 days.

78. Nothing was said in those directions about the notice of appeal being out of time; the Tribunal appeared to overlook the matter. HMRC had been given no set time in which to object to the late appeal so it seems to me that by objecting to the late appeal before the due date for the statement of case, HMRC were not out of time to do so.

79. It was the appellant's application; if it objected to the extended timetable set by the Tribunal which in effect allowed HMRC an unspecified amount of time in which to object to the late appeal application, the appellant should have made an application for a shorter time frame to the Tribunal. It cannot say that HMRC, in sticking to the timetable set by the Tribunal, was acting improperly or making a representation that it did not object to the appeal being late.

Was there reliance to the appellant's detriment?

80. The appellant did not even attempt to prove that it had relied on HMRC's inaction to its detriment. It pointed out that it had continued to incur legal fees, but it would have had to do that anyway. It had proceedings on foot in the Tribunal.

81. I agree it would have been unwise to incur legal fees on preparing for the substantive appeal before the application for it to be admitted out of time was resolved in its favour, but I had no evidence that the appellant had done that.

82. In any event, had it done that, I consider it could not have blamed HMRC as HMRC had not made a representation that they did not object to the late admission of the notice of appeal.

Was the tribunal at fault?

83. The Tribunal could have acted with less delay; it could have reminded HMRC that the notice of appeal included an application for the appeal to be admitted out of time; the Tribunal's letter of 12 August could more accurately have described the proceedings as 'this application' rather than as 'this appeal'; it could have set a deadline for HMRC to object to the late appeal application.

84. Even if the Tribunal should be criticised for all or any of these omissions, and I do not say that could, it does not advance the appellant's case. It was always open to the appellant to apply to the Tribunal if it wanted the case managed differently; and failures by the Tribunal cannot be visited on one of the litigants to the advantage of the other.

Conclusion

85. I do not think that on the above facts any of the post-submission events affect the exercise of my discretion on whether or not to admit this appeal out of time. In particular, I do not accept that either the HMRC made any representation to the appellant that they did not object to late admission of the appeal or that they unduly delayed their objection.

86. What is relevant is that there was a delay by the appellant in lodging its notice appeal for slightly under two months that was for no good reason (I ignore the delay of the last 12 days for which I thought there was a good reason). I was told either that the appellant forgot or was too naïve to understand the importance of the assessment. Even if true, it is not a good reason: a person running a business should act responsibly. Moreover, the appellant was clearly able to take professional advice and did so on other matters and could have done so much earlier on the matter of the duty assessment.

87. There is a 30 day time table set for appeals, and the appellant took more than double this before it lodged its appeal. It was a serious delay and HMRC had proceeded to act as if the assessment was not challenged.

88. The consequences of not admitting the appeal are serious for the appellant but that by itself is not enough to admit the appeal. Taking into account the length of the delay and the fact (apart from the last 12 days) there was no good reason, I do not think the appeal should be admitted. The application is refused, and that brings these proceedings to an end.

Application for costs

89. HMRC had applied for its costs of this hearing but the parties agreed that this would not be considered at today's hearing; HMRC would renew the application after receiving my decision if they wished to do so, otherwise it will be treated as withdrawn.

90. 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.

BARBARA MOSEDALE
TRIBUNAL JUDGE

RELEASE DATE: 09 JULY 2018