



[2021] UKFTT 0475 (TC)

TC 08349(V)

*Refusal to permit making of late appeal. Applicant sought to appeal – under section 16 Finance Act 1994 – a decision under section 152(b) Customs and Excise Management Act 1979 refusing to restore vehicle seized under section 139(1) of that act as being liable to forfeiture under section 141(1)(a) of the act. Whether document sent within appeal time limit but to respondent instead of to tribunal was the appeal. Held: no. Whether receipt of that document by respondent stopped time running for making appeal. Held: no. Whether document sent seven weeks after appeal time limit but to respondent instead of to tribunal was the appeal. Held: no. Notice of Appeal filed with tribunal some eight months after appeal time limit. Permission to make late appeal refused under section 16(1F) Finance Act 1994. Three-step test in *Denton v TH White Limited* (and related appeals) [2014] EWCA Civ 906. *Martland v HMRC* [2018] UKUT 178 (TCC) and *Romasave (Property Services) Limited v HMRC* [2015] UKUT 254 (TCC) applied. *BPP Holdings Ltd and others v HMRC* [2017] UKSC 55 and *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) considered.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/04272(V)

BETWEEN

MR TIBOR JANOS MOZER

Applicant

-and-

THE DIRECTOR OF BORDER REVENUE

Respondent

TRIBUNAL: JUDGE RACHEL PEREZ

The hearing took place by video on 1 December 2021 (hence “(V)” after the appeal number above). The applicant’s son, Mr Mozer, represented the applicant. Mr Rupert Davies of counsel represented the respondent.

DECISION

1. The appeal was made on 7 December 2020. So it was made eight months and three days late.
2. Permission to make the late appeal is refused.
3. I am sorry for the disappointment this will cause.

REASONS

INTRODUCTION

4. The applicant seeks to appeal a review decision dated 6 March 2020 in which the respondent refused to restore a seized Hyundai Panel Van registration number PJD 391 (“the vehicle”). The respondent says the appeal was made out of time. The applicant asks the tribunal to admit the appeal. The respondent opposes the application.

5. On 12 November 2019, the applicant’s son, whom I shall call Mr Mozer Junior (who represented the applicant at the hearing) was driving the vehicle when it was intercepted and seized at the Port of Dover pursuant to section 141(1)(a) of the Customs and Excise Management Act 1979 (“CEMA”). The vehicle was seized on the ground that it was used for the carriage of goods liable to forfeiture, namely 7,400 cigarettes in respect of which no excise duty had been paid. The respondent’s case as to the cigarettes was that, on searching the vehicle, the officer conducting the search found – hidden under clothing – cigarettes additional to those which the driver had produced to the officer. On being asked why he had not informed the officers about the additional cigarettes, the driver told the officer – according to the respondent – that the driver could have what he liked if they were for himself.

6. The driver, Mr Mozer Junior, was then interviewed. In the interview, he said that the reason he had not told the officers who searched the vehicle about the additional cigarettes was because “I just forgot”. He stated that the cigarettes would last for three months and that he and his partner each smoked 20 cigarettes per day.

7. The officer was satisfied that the cigarettes were held for a commercial purpose and so seized them under section 139(1) of CEMA as being liable to forfeiture under regulation 88 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 and section 49(1)(a)(i) of CEMA. The vehicle too was seized under section 139(1), as being liable to forfeiture under section 141(1)(a) because used for the carriage of goods liable to forfeiture.

8. On 18 November 2019, the applicant wrote to the respondent requesting restoration of the vehicle. The respondent acknowledged the request by letter dated 10 December 2019, and by letter dated 22 December 2019 refused the request. A review was requested by letter dated 27 January 2020. Also on 27 January 2020, the respondent wrote explaining the review process and inviting the applicant to provide any further information in support of the request for a review. The review decision letter dated 6 March 2020 upheld the non-restoration decision.

9. The time for appealing against that review decision was, by virtue of section 16(1) of the Finance Act 1994, the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates. The date of the document notifying the decision was 6 March 2020. So 6 March 2020 was day 1 of the 30-day period, and the deadline for appealing was therefore 4 April 2020. Mr Mozer Junior sent an undated letter to Border Force, which Border Force received on 2 April 2020, two days before the 4 April appeal deadline. And he said he had sent an email to Border Force at the end of May 2020, some seven weeks after the 4 April appeal deadline. The Notice of Appeal was uploaded to the tribunal website eight months and three days after that deadline, on 7 December 2020. By virtue of section 16(1F) of the Finance Act 1994, an appeal may be made after the end of the 30-day period if the tribunal gives permission to do so.

QUESTIONS

10. Two broad questions arise. First, was the appeal made late?¹ Second, if so, should the tribunal permit it to be made late?

SUBMISSIONS FOR THE APPLICANT

11. Mr Mozer Junior said he had sent a letter within the 30 days. He meant his undated letter to Border Force, received on 2 April 2020. He said he sent the email at the end of May 2020 when he had not received a reply to the April letter. He said he had received no reply to the May email either. He said he had understood what the review decision letter said about appealing, but that “I wrote the letter to be within the 30 days because the final decision said if I had new information, I could write back”. He said he understood that “fresh information” in the review decision letter meant “new information”. He said the fresh information was that he had not been going to sell the cigarettes. He accepted that he had already said that in his interview at Dover. But he said he wanted to put it in writing in response to the review decision letter. He accepted that the review decision letter recorded that he had said in his interview that “you can have as much as you like if it is for you”. But, he explained, the rest of the review decision letter was about profit, and the letter writer seemed not to accept what he had said about not selling the cigarettes so he said it again because he wanted the letter writer to understand that what the letter writer thought was not right.

12. Mr Mozer Junior explained that, at the start of the Covid pandemic in 2020, he went to his home town in Hungary because his UK employer had closed because of the pandemic. He said that his housemate emailed him a photo of the review decision letter, and that he, Mr Mozer Junior, then sent the letter received by Border Force on 2 April 2020. It is not clear whether Mr Mozer Junior was in Hungary or in the UK when he sent that letter (my hearing notes say he told me the UK, but I think I may have written it down wrongly). But he was in Hungary when he sent the May email to Border Force (the tribunal and Mr Davies did not have the email but Mr Mozer Junior’s explanation was to the effect that it was to chase a reply to his April letter). Mr Mozer Junior explained that he came back to the UK in December 2020 because his employer’s company opened again and so he could start working again. He told me he did have access to his emails and to the tribunal website while he was in Hungary, but that he was waiting for a reply to his May email so that he could say something to his father (the applicant). Mr Mozer Junior explained that he did not upload a Notice of Appeal while in Hungary because he did not want to make a mistake with his English. He explained that, on his return to the UK in December, he told a friend about the case and the friend put him in touch with a friend of the friend, a Hungarian lady who spoke English and lived and worked in the UK. Mr Mozer Junior explained that he had not known of that lady before returning to the UK, so it was not a question of waiting until December to speak to her, nor of contacting her from Hungary for help. Rather, he explained, it was only when he mentioned the case to a friend in the UK in December that Mr Mozer Junior then sought help from the lady who spoke English.

13. I asked Mr Mozer Junior about his father’s use of the vehicle, and how they swap it from the UK to Hungary and back. Mr Mozer Junior explained that his father farms vegetables and uses the vehicle in the summer, for collecting the vegetables from the field, taking them to the house to be washed, and then taking them to market to sell. He explained that his father did this five or six days per week. He explained that, when it is time to collect the vehicle from his father after the summer, Mr Mozer Junior goes onto a website that finds other people who are driving to the same place as he is. So he finds someone who is driving to Hungary (via

¹ I use “made late” in the first question as shorthand for the attempt to make the late appeal since, under this particular statutory provision, an appeal is made late only with the tribunal’s permission.

ferry from the UK to mainland Europe) and travels with that person. Then he collects the vehicle from his father and drives it back to the UK. He explained that he reverses the process when he is taking the vehicle back to his father in readiness for his father's summer use of it. The vehicle was seized in November 2019. So his father was without it the following summer. That coincided with the pandemic. But Mr Mozer Junior explained that, in the pandemic, his father still farmed and sold vegetables, but to buyers different from those he would sell to in a normal summer. So, he said, his father was still – in the summer after the vehicle was seized – collecting vegetables from the field, taking them to the house to wash, then taking them from the house to sell. He explained that his father coped without the vehicle by borrowing vehicles from friends and neighbours. He said that, despite the pandemic, his father still needed a vehicle on five or six days per week in the summer, and that his father accomplished this by borrowing from several people, so that each lender was not without the vehicle loaned to his father for the whole five or six days.

SUBMISSIONS FOR THE RESPONDENT

When the appeal was made

14. Mr Davies submitted that the letter received on 2 April 2020 was not an appeal and should not reasonably be treated as an appeal. As far as Mr Davies knew, Border Force simply filed it, because their process had finished. The process was, he explained, that Border Force tell the applicant of the decision, invite a response, if a review is requested then Border Force do a review, and after that, an appeal is to be made to tax tribunal, as explained at the end of the review decision letter. Mr Davies explained that Border Force do not engage with letters repeating the restoration request because they would get bogged down in a tit-for-tat process where the request is repeated and the refusal is also repeated. He explained that, although the review decision letter did say that fresh information could be provided to Border Force, the view was taken that the April letter did not say anything new, and so Border Force made no response to that letter.

15. Mr Davies did not have a copy of the email which Mr Mozer Junior said Mr Mozer Junior had sent to Border Force at the end of May 2020. But, said Mr Davies, if the email reiterated what was said in the April letter, then the email would not have been responded to either.

16. Mr Davies's submission was that the Notice of Appeal uploaded on 7 December 2020 was the appeal, and that the appeal was therefore made on that date and was some eight months late.

Whether to permit the appeal to be made late

17. Mr Davies submitted that any application to do something after the time permitted by tribunal procedure rules or by any other enactment should be treated in the same way as an application for relief from sanctions, citing *R (on the application of Dinjan Hysaj) v the Secretary of State for the Home Department [2014] EWCA Civ 1633*². He submitted that the appropriate test is similar to the relief from sanctions provisions in Civil Procedure Rule 3.9 (albeit with reference to the tribunal's overriding objective rather than that of the Civil Procedure Rules). Mr Davies submitted that the tribunal should follow a similar approach, citing *BPP Holdings Ltd & Ors v Revenue and Customs [2017] UKSC 55*³ at paragraph 26.

² [Hysaj, R \(On the Application Of\) v Secretary of State for the Home Department \[2014\] EWCA Civ 1633 \(16 December 2014\) \(bailii.org\)](#)

³ [BPP Holdings Ltd & Ors v Revenue and Customs \[2017\] UKSC 55 \(26 July 2017\) \(bailii.org\)](#)

18. The applicability of Civil Procedure Rule 3.9 to applications for permission to appeal to the First-tier Tribunal outside the relevant statutory time limit was, explained Mr Davies, confirmed in *Martland v The Commissioners for Her Majesty's Revenue and Customs* [2018] UKUT 178 (TCC)⁴ at paragraph 43. Civil Procedure Rule 3.9 provides⁵—

“(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need—

- (a) for litigation to be conducted efficiently and at proportionate cost; and
- (b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.”.

19. Mr Davies submitted that the three-stage test in *Denton v TH White Limited (and related appeals)* [2014] EWCA Civ 906⁶ also applies, as confirmed in *Martland* at paragraph 44. *Denton* requires a court sequentially to address: first, whether the breach was serious and significant, second, the reasons for the breach and third, all the circumstances of the case, with particular weight given to the considerations in Civil Procedure Rule 3.9.

20. The questions posed in *Data Select Limited v The Commissioners for Her Majesty's Revenue and Customs* [2012] UKUT 187 (TCC)⁷ at paragraphs 34 to 38 are relevant, submitted Mr Davies, only in so far as they may be considered as part of “all the circumstances of the case”. He cited *The Commissioners for Her Majesty's Revenue and Customs v McCarthy & Stone (Developments) Limited and Monarch Realisations No 1 plc (in administration)* [2014] UKUT 196 (TCC)⁸. The *Data Select* questions are set out in paragraph 34 of the *Data Select* decision—

“34. ... As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (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 an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time. The court or tribunal then makes its decision in the light of the answers to those questions.”.

21. Having explained the *Denton* three-step test, Mr Davies went on to address how each of the three steps affects this case.

First step of the Denton test: is the delay serious and significant?

22. As to the first step of the *Denton* test, Mr Davies submitted that the eight-month delay in making the appeal was both serious and significant. He cited *Romasave (Property Services) Limited v The Commissioners for Her Majesty's Revenue and Customs* [2015] UKUT 254 (TCC)⁹ which said at paragraph 96—

“96. ... The exercise of a discretion to allow a late appeal is a matter of material import, since it gives the tribunal a jurisdiction it would not otherwise have. Time limits imposed by law should generally be respected. In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant.”.

⁴ *Martland v The Commissioners for HM Revenue and Customs (Tax)* [2018] UKUT 178 (TCC) (1 June 2018) (bailii.org)

⁵ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03#3.9>

⁶ *Denton & Ors v TH White Ltd & Ors* [2014] EWCA Civ 906 (04 July 2014) (bailii.org)

⁷ <https://www.bailii.org/uk/cases/UKUT/TCC/2012/187.html>

⁸ <https://www.bailii.org/uk/cases/UKUT/TCC/2014/196.html>

⁹ <https://www.bailii.org/uk/cases/UKUT/TCC/2015/254.pdf>

That paragraph of *Romasave* went on to say—

“We note, although judgment was given only after we had heard this appeal, that in *Secretary of State for the Home Department v 10 SS (Congo) and others* [2015] EWCA Civ 387 the Court of Appeal, at [105], has similarly described exceeding a time limit of 28 days for applying to that court for permission to appeal by 24 days as significant, and a delay of more than three months as serious. Although each case must be considered in its own context, we can find nothing in this case which would alter our finding in this respect. As the court in *SS 15 (Congo)* observed, one universal factor in this respect is the desirability of finality in litigation, a factor that is present in this case: see *Data Select* at [37] above. We are also mindful of the comments of Sir Stephen Oliver, sitting in the First-tier Tribunal, in *Ogedegbe v Revenue and Customs Commissioners* [2009] UKFTT 364 (TC) (discussed in *Markland v Revenue and Customs Commissioners* [2011] UKFTT 559 20 (TC) and by this tribunal in *O’Flaherty v Revenue and Customs Commissioners* [2013] UKUT 0161 (TCC)) that permission to appeal out of time should only be granted exceptionally, meaning that it should be the exception rather than the rule and not granted routinely.”.

Second step of the Denton test: the reasons for the delay

23. As to the second step of the *Denton* test, Mr Davies submitted that there was no good reason for the delay. He submitted that a letter addressed to Border Force is not a Notice of Appeal and does not extend time. Nor was it reasonable, he submitted, for the applicant to think that a letter sent to Border Force would count as a Notice of Appeal or would extend time; the review decision letter explicitly explained at page 7/12 that the applicant had 30 days to appeal and it said the appeal should be made on the appropriate forms and sent to the tribunal using the tribunal address provided. As to the time that Mr Mozer Junior had been in Hungary, Mr Davies submitted that he did not understand there to have been any difficulty in uploading a Notice of Appeal from Hungary. Mr Davies submitted that, even if it was initially reasonable for Mr Mozer Junior to believe he was supplying fresh information and to wait for a reply (neither of which Mr Davies conceded), waiting so long – that is until 7 December 2020 – was not reasonable.

Third step of the Denton test: all of the circumstances

24. As to the third step of the *Denton* test, Mr Davies submitted that, in all of the circumstances, the tribunal should not permit the appeal to be made late, for the following reasons. The applicant had not asserted that it was in the interests of justice to allow the application. But, in any event, the interests of justice do not automatically result in the grant of extensions of time to appeal. There is a public interest in the finality of litigation, particularly where one of the litigants is a public body, as here. Prejudice would be caused to the respondent if it was required to reopen a matter believed concluded. Mr Davies cited Morgan J in *Data Select*, at paragraph 37¹⁰—

“37. In my judgment, the approach of considering the overriding objective and all the circumstances of the case, including the matters listed in CPR r 3.9, is the correct approach to adopt in relation to an application to extend time pursuant to section 83G(6) of VATA. The general comments in the above cases will also be found helpful in many other cases. Some of the above cases stress the importance of finality in litigation. Those remarks are of particular relevance where the application concerns an intended appeal against a judicial decision. The particular comments about finality in litigation are not directly applicable where the application concerns an intended appeal against a determination by HMRC, where

¹⁰ Mr Davies cited the text that I have underlined. I include the rest of the paragraph for context.

there has been no judicial decision as to the position. Nonetheless, those comments stress the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled and that point applies to an appeal against a determination by HMRC as it does to appeals against a judicial decision.”.

25. The written grounds signed by Border Force’s lawyer, John Russell, said at paragraph 26 on page 52 of the tribunal bundle that, while the respondent accepted that there would be some prejudice to the applicant in not being permitted to bring a late appeal, there would be no exceptional prejudice over and above that caused to any applicant refused permission to bring a late appeal.

26. Mr Davies submitted that the length of delay, the lack of good reason for it, and the requirement to promote finality and enforce time limits together weighed against allowing an extension of time in this case and that the application should be dismissed.

DISCUSSION

27. I gave two broad questions at paragraph 10 above. (1) Was the appeal made late? (2) If so, should the tribunal permit it to be made late? The *Denton* test, applied in *Martland* and advanced by Mr Davies, is relevant to the second of those questions. I take each of the two questions in turn.

Question 1: Was the appeal made late?

28. Yes, I accept that the appeal was made eight months and three days late on 7 December 2020. I say that for the following reasons.

The letter received by Border Force on 2 April 2020

29. I accept that the letter received by Border Force on 2 April 2020 – two days before the 30-day appeal deadline – was not the appeal (and should not be treated as the appeal). It was not uploaded to the tribunal website nor addressed to the tribunal. Indeed, although Mr Mozer Junior did say that he sent the letter to arrive within that 30-day time limit, he knew – he said – that he was not in fact appealing to the tribunal but was (he said) supplying fresh information to Border Force, namely, that he had not intended to sell the cigarettes.

30. I accept too that the April letter did not stop time running for making the appeal. If Mr Mozer Junior had indeed supplied fresh information to Border Force, the review decision letter – although not entirely clear on the point – did appear to imply that the time for appealing would not apply, or would stop running, if fresh information were supplied to Border Force. I find, however, that the assertion in the April letter that Mr Mozer Junior had not intended to sell the cigarettes was not fresh information. Mr Mozer Junior had already told the interviewer at Dover that Mr Mozer Junior had not intended to sell the cigarettes, as Mr Mozer Junior himself accepted. Moreover, to the extent that it could be relevant that an applicant reasonably considers that the information is fresh to the writer of the review decision letter, I do not accept that the applicant (via his son Mr Mozer Junior) reasonably considered the assertion to be fresh information to the letter writer. It was clear from the review decision letter that the letter writer had been told that Mr Mozer Junior had previously said that the cigarettes were for himself: the review decision letter recorded that he had said in interview: “you can have as much as you like if it is for you”. And Mr Mozer Junior explained to me that the reason he reiterated that in his April letter was because the letter writer was not accepting that explanation and so Mr

Mozer said it again to try to persuade him to accept it. It is for these reasons that I find that the April letter did not stop time running for making the appeal.

The email sent to Border Force at the end of May 2020

31. I accept that Mr Mozer Junior sent an email to Border Force at the end of May 2020. By that time, the time for appealing had already expired (on 4 April). And so the email was not a candidate for potentially stopping time running, unlike the April letter. I have not seen the email. On Mr Mozer Junior's account, it chased a response to his April letter. Had the email been the appeal, it would have been a few days short of two months late: a much smaller delay than the eight months and three days ending with 7 December 2020. I do not however find that the email sent at the end of May was the appeal (or that it should be treated as the appeal). It was not made to the tribunal nor addressed to the tribunal. Indeed, as with the April letter, Mr Mozer Junior knew – and accepted – that it was not an appeal.

32. Given my finding that the appeal was made eight months and three days late, on 7 December 2020, the next question is: should the tribunal permit it to be made late?

Question 2: Should the tribunal permit the appeal to be made late?

33. No. I do not permit the appeal to be made late, for the following reasons.

First step of the Denton test: is the delay serious and significant?

34. As to the first step of the *Denton* test, I accept in light of *Romasave*, and in any event, that the delay of eight months and three days was serious and significant. It was more than eight times the 30-day period for making an appeal. The respondent could reasonably be expected to have considered the case closed by that point.

Second step of the Denton test: the reasons for the delay

35. As to the second step of the *Denton* test, the reasons for the delay, there are two points to be made. First, I found at paragraph 30 above that Mr Mozer Junior did not (on behalf of his father, the applicant) reasonably believe that he was supplying fresh information in the letter received by Border Force on 2 April 2020.

36. But second, even if Mr Mozer Junior did believe that he was supplying fresh information in the April letter, and if that belief could amount to a good reason for some of the delay, I accept Mr Davies's submission that it was not reasonable to wait until 7 December 2020 in the absence of a reply to the April letter or to the May email. I say that for the following reasons.

37. Mr Mozer confirmed that he did have internet access in Hungary in the time between receiving the review decision letter and when he left Hungary in December 2020. In particular, he told me that he was – while in Hungary – able to access the tribunal website to upload the Notice of Appeal. The only reason he gave for waiting until 7 December to make the appeal was that he was not confident that his English was good enough to complete the Notice of Appeal. He explained that he did complete it as soon as he got back to the UK in December 2020. He told me that, at that point, he had the help of the Hungarian lady he had told me about. But when I asked Mr Mozer Junior why he had not sought that lady's help while he was in Hungary, he explained that he did not actually know of her while he was in Hungary. It was only when he got back to the UK, he explained, and told a friend about the case that the friend suggested that this lady might be able to help. In other words, Mr Mozer Junior did not have in mind – while in Hungary from March or April to December 2020 – that this lady would be

helping him when he got back to the UK, because he had not even heard of her in that period. He gave no reason for not having attempted to find someone with better English than his while he was in Hungary. He had a telephone and internet access. He gave no reason for not having approached, while in Hungary, the friend whom he told about the case when he got back to the UK (the friend who put him in touch with the lady who spoke English).

38. But even if Mr Mozer Junior did not have anyone with better English than his own to help him while he was in Hungary – whether by telephone or video call or email – I find that he could still have completed and uploaded the Notice of Appeal. His English was good enough to write the letter that he wrote in April 2020 and to send a chaser email in May 2020. That was more than adequate in my judgment to be able to understand the basic field headings in the Notice of Appeal such as “What is your appeal about?” and “What is your dispute about?”. Even if he had had help writing the April letter, there was no reason why he could not copy some of that letter into the Notice of Appeal. The letter did more than simply reiterate that he had not planned to sell the cigarettes. Moreover, the Notice of Appeal did not have to be in perfect English. Getting it in on time with even just the basics such as (i) the date of the letter being challenged, (ii) a statement that the applicant disagreed with the decision, and (iii) a repeat of the assertion that Mr Mozer Junior would not do this again to his father (as he had said in the April letter) would have been better than waiting over eight months to make any appeal at all.

39. I find that Mr Mozer Junior simply did not attend to the case while in Hungary, and turned his mind to it again only once he was back in the UK. That was not in my judgment a sufficient reason to wait until 7 December 2020.

Third step of the Denton test: all the circumstances

40. As to the third step of the *Denton* test, I have considered – and accept – Mr Mozer Junior’s description of how his father, the applicant, has coped without the vehicle so far. His father has been able to borrow vehicles from others for the (up to) six days per week that he needs a vehicle for farming his vegetables, and selling them, each summer (two summers so far). Moreover, Mr Mozer Junior had said in his April 2020 letter that he, Mr Mozer Junior, had his own car, a 2005 Ford Focus (and had explained in the letter why he preferred to use his father’s vehicle rather than the Ford Focus for certain trips). So Mr Mozer Junior still had the Ford Focus after his father’s vehicle had been seized. Since it was Mr Mozer Junior’s fault – as he accepts – that his father’s vehicle was seized, Mr Mozer Junior could have let his father have, or at least use, Mr Mozer Junior’s own car. No matter its size, it would have been better than no vehicle at all. Indeed, that would be a way of achieving to some extent Mr Mozer Junior’s heartfelt plea in his April letter: “*Please if I made the mistake punish me not my father. He is 66 years old. He can’t buy another vehicle for him job*”.

41. I have also considered to some extent the merits of the potential appeal. The legality of the vehicle’s seizure has not, said Mr Davies, been challenged. Indeed, Mr Mozer Junior appears to accept that he did wrong in relation to bringing in the cigarettes without paying duty. Mr Davies explained that one of the considerations on an appeal for whether the vehicle should be restored would be whether restoration would be tantamount to restoring to the smuggler. In this case, the answer would on the face of it seem to be “yes”, given that the vehicle belonged to the smuggler’s father. That is a point *prima facie* against restoration. Although Mr Mozer Junior’s position appeared to be that he would not do this to his father again, the relevance, weight and accuracy of that position would need to be considered by the tribunal on an appeal. In other words, the merits of the potential appeal are not in my judgment strong enough to outweigh a delay of eight times the period for appealing.

42. Finally, I consider that Mr Mozer Junior's failure to turn his mind to progressing the appeal while he was in Hungary should not be rewarded by admission of the late appeal.

43. I find therefore that the prejudice to this applicant of not admitting the late appeal does not outweigh the public interest in the finality of litigation in this case.

CONCLUSION

44. It is for the all of the above reasons that (i) I find that the appeal was made eight months and three days late, and (ii) I do not permit the appeal to be made late.

APPEALING AGAINST THIS DECISION

45. 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 the First-tier Tribunal not later than 56 days after this decision is sent to the party making the application. 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.

RACHEL PEREZ
TRIBUNAL JUDGE
Release date: 13 DECEMBER 2021