



[2019] UKFTT 228 (TC)

TC07075

VAT penalty – allow appeal out of time – refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/01638

BETWEEN

MRS BUSHRA SALEEM-SADIQ

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE SARAH ALLATT

Sitting in public at Taylor House on 1 April 2019

The Appellant in person

Ms Esther Hickey, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. The appellant is appealing out of time against a Notice of Liability to Register for Value Added Tax issued on 7 March 2016, and a Notice of Penalty issued on 5 May 2016. The appeal by the appellant was made on 26 February 2018.

BACKGROUND

2. The Substantive Appeal is in relation to certain eBay trades conducted by the Appellant, or, as she contends, a company of which she was a director, between July 2010 and November 2012. The Appellant has at various times before and after the time in question been a director of a business that sells fashion on line and from a physical shop.

3. The substantive ground of appeal is that HMRC has assessed the incorrect person, and should have assessed a limited company. It is noted that this limited company has been liquidated.

4. HMRC enquired into various matters surrounding the business and dealt with an authorised agent of Mrs Saleem Sadiq from August 2015.

5. Throughout the period August 2015 – March 2016 HMRC were in regular contact with the Appellant's agent as the enquiry progressed.

6. This culminated in HMRC issuing, on 7 March 2016, a Notification of Liability to Register for VAT letter, and on 22 May 2016, a Notice of Penalty.

LATE APPEAL – REPRESENTATIONS

7. The Appeal was made on 26 February 2018. This is significantly late, being over 20 months after the date to appeal the penalty notice.

8. We heard from Mrs Saleem Sadiq that her accountant wrote to HMRC on 5 April 2016. This letter stated 'our client wishes to raise and appeal against the penalties raised. They have accepted the liability but believe the penalties are too much and keeping their view in consideration, can be reduced or revoked.'

9. This letter was never received by HMRC, and hence HMRC never replied. This letter was not an appeal, or a request for review, and appears not to have been followed up by the accountant in any way.

10. Despite very regular communication between HMRC and the accountant prior to the raising of the assessment, there was no further communication after this letter.

11. On 5 December 2016 the Appellant phoned HMRC to discuss the penalty. She requested that the penalty be cancelled. HMRC advised her that this could not be done as the penalty was for the failure to register her liability, and that the figures had been discussed with her accountant.

12. We heard from the Appellant that she had made multiple calls to the debt management agency, to discuss time to pay arrangements. She had considerable difficulty at times getting through and found this very frustrating.

13. Throughout this period the Appellant had stated that she agreed with the tax liability but disputed the penalty.

14. HMRC commenced bankruptcy proceedings and the Appellant appealed to the Tribunal in February 2018.
15. The Appellant then appealed to the Tribunal.
16. The Appellant stated that she had emailed her accountant several times during 2016 asking for the progress of the case, and was told it was being dealt with. No evidence was produced surrounding these emails. It should be noted that a case management hearing had resulted in directions being made that were very specific about producing all evidence for this hearing.
17. The Appellant stated that the accountant was based abroad, and so she dealt with him almost exclusively by email. Sometimes she posted letters to HMRC from him herself.
18. HMRC submit that the Tribunal should not allow the late appeal.
19. They submit that they believed they had finality in this case in mid 2016, and it should not be re-opened now. HMRC have spent considerable time and effort attempting to collect the debt from the Appellant, and an appeal would delay that further
20. HMRC submit that no good explanation has been given for the significant delay.
21. HMRC acknowledge that if the late appeal is refused then this will have significant consequences for the appellant. They contend that allowing the appeal would have significant consequences for them.

THE LAW

22. The law surrounding late appeals has recently been considered by the Upper Tribunal in *Martland* [2018] UKUT 178 (TCC). Previously the leading case had been *Data Select* [2012] UKUT 187 (TCC).
23. *Data Select* had set out five considerations for the FTT to consider
 - (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?
 - (5) What will be the consequences for the parties of a refusal to extend time?
24. *Martland* has modified this approach very slightly, saying this:

When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be.

In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:

- 1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being ‘neither serious nor significant’), then the FTT is unlikely to need to spend much time on the second and third stages - though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

- (2) The reason (or reasons) why the default occurred should be established.
- (3) The FTT can then move onto its evaluation of ‘all the circumstances of the case’. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission, .

That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.

In doing so, the FTT can have regard to any obvious strength or weakness of the applicant’s case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one.

Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT’s consideration of the reasonableness of the applicant’s explanation of the delay. Nor should the fact that the applicant is self-represented – Moore-Bick LJ said ‘being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules’. HMRC’s appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person.

DISCUSSION

25. The delay in this case was clearly serious and significant. The explanation for the delay is that a letter was sent that HMRC did not receive. However, this letter was not an appeal and was not followed up with an appeal, neither was it followed up in good time with a request for a response. The appellant states that she relied on her accountant and did chase him, but that case is not backed up by copies of any emails, despite a previous case management hearing which made it clear that everything was to be produced for this hearing. Given also that the accountant was based abroad and that during the hearing the appellant stated ‘I do not think he was chasing up’, I do not consider that this was a case where the appellant had every reason to believe the accountant was dealing with all matters.

26. In considering ‘all the circumstances of the case’ I bear in mind that the consequences for the Appellant are extremely serious. I balance that against the need for HMRC to have finality in this case. I also bear in mind, without delving significantly into the substantive merits of the case, that for a significant amount of time during and after the enquiry the appellant appeared content that the liability was due, although she now contends it should be in the name of a limited company. My assessment of the case is that it is weak although not entirely without merit.

DECISION

27. I consider that the delay was so serious that, taken with the starting point that permission to appeal should not be granted unless the Tribunal is satisfied that it should be, I am not persuaded that this situation is one in which permission should be granted. The explanation is not sufficient for a delay of over 20 months to be overlooked.

28. This appeal is therefore **STRUCK OUT**.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

29. 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.

**SARAH ALLATT
TRIBUNAL JUDGE**

RELEASE DATE: 05 APRIL 2019