



TC07602

Appeal number: TC/2019/00853

PROCEDURE – application for reinstatement – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DE BUILD LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

Sitting in chambers in London on 17 February 2019

Having considered the application made by High Craen of De Build Ltd for the Appellant and the notice of objection submitted by the Respondents

DECISION

1. This is an application made on 5 November 2019 for reinstatement of an appeal which was withdrawn by the appellant on 21 October 2019

Background

2. This application relates to an appeal made on 8 February 2019, in which the applicant appealed a decision by the respondents (HMRC) to issue a Notice of Requirement for the appellant to provide security under paragraph 4(2)(a) of Schedule 11 of the Value Added Tax Act 1994.

3. The appeal was listed for hearing on 22 October 2019. On 21 October 2019, the applicant advised the Tribunal that they wished to withdraw from the appeal process and that this would allow the Tribunal to cancel the hearing.

Applicant's case

4. The applicant provided no reasons to the Tribunal as to why the appeal should be reinstated. The applicant also provided no reasons to the Tribunal as to why they withdrew the appeal.

5. HMRC's Notice of Objection was copied to the applicant. No response was received from the applicant to the representations in that Notice.

HMRC's case

6. HMRC submitted that, in the absence of any supporting reasoning as to why the application should succeed, the application should fail as it is in the interests of justice that litigations should not make applications where they do not attempt to make any reasonable arguments supporting the relief sought from sanctions.

7. HMRC noted that, shortly before the appeal was withdrawn, the applicant had advised that they intended to withdraw because they had considered the strength of their case, inability to secure legal representation and illness of their director, who thought that he would be unable to attend the hearing.

8. HMRC submitted that they would be prejudiced if the appeal were reinstated as the applicant has failed to comply with VAT requirements during the appeal process and that reinstatement would prejudice HMRC's ability to pursue the criminal proceedings which the applicant had been advised would follow a decision of the tribunal.

9. HMRC submitted that there was also a risk that further avoidable costs would be incurred, given that the applicant apparently believed that their case was not strong and has not given any reasons why circumstances have changed.

Relevant law

10. The relevant statutory provision concerning strike out is contained in Rule 17(3) Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“Tribunal Rules”). This rule provides that an appellant whose appeal has been withdrawn may apply for it to be reinstated.

11. The exercise of the Tribunal’s discretion in all matters is subject to the overriding objective set out in Rule 2 of the Tribunal Rules. This requires that the Tribunal deal justly and fairly whilst acting proportionately, to make the proceedings accessible, avoiding formality and avoiding delay.

Discussion

12. Neither of the parties provided any details from case law as to the approach to be taken; I have taken into account the factors set out in *Pierhead Purchasing Limited v HMRC* [2014] UKUT 321 where Proudman J. described five factors which the Tribunal should take into account when considering reinstatement:

- (1) The reasons given by the applicant for the withdrawal;
- (2) Whether HMRC would be prejudiced by reinstatement and, if so, the extent of that prejudice;
- (3) Whether the applicant would be prejudiced by a refusal to reinstate and, if so, the extent of that prejudice; and
- (4) Whether reinstating this appeal would be prejudicial to the interests of good administration.
- (5) The merits of the proposed appeal so far as they can conveniently and proportionately be ascertained.

Reasons given for withdrawal

13. There is public interest in finality in litigation. By requesting reinstatement, the applicant is applying for relief from sanctions imposed by the Tribunal.

14. The applicant gave no reasons to the Tribunal for the withdrawal, nor for the request for reinstatement. It appears from information provided by HMRC that the applicant decided that they had decided that they did not want to continue and, presumably, changed their mind when they received the Tribunal correspondence confirming withdrawal. If reinstatement were allowed where no reasons are given, or for a simple change of mind, the other party would have no certainty that the litigation had ended when the appeal was withdrawn.

Prejudice to the parties

15. There is clear prejudice to HMRC in that the appeal had been struck out and reinstatement would put HMRC to the cost of defending it, particularly having already

incurred the costs involved with the very short notice withdrawal a matter of hours before the hearing.

16. There is also clear prejudice to the appellant if the appeal is not reinstated, in that the appellant will not have an opportunity to appeal the Notice and will either need to provide the security required or cease trading.

Prejudice to good administration

17. I have already said that reinstating the appeal is against the public interest in finality in litigation.

Merits of the appeal

18. As a case management decision, a reinstatement application should not involve any extensive consideration of the merits of the appeal. Nevertheless, it could be relevant if there are clear merits which would make it a very strong case or, equally, no real prospect of success. Reviewing the papers provided by the parties, the applicant's case does not appear to be such that it would be strong enough to weigh in favour of reinstatement. Equally, I do not consider it to be so weak that it would have no reasonable prospect of success. Accordingly, I do not consider that the merits of the appeal are relevant to the decision as to whether or not to reinstate the appeal.

Decision

19. I have weighed all of the factors above and conclude that, notwithstanding the prejudice to the applicant, the appeal should not be reinstated. The prejudice to good administration and to HMRC are clearly outweighed by the lack of any reason given for the withdrawal or the reinstatement application. An applicant cannot expect relief from the consequences of their actions without providing a good reason.

20. The application for reinstatement is refused.

21. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 20 FEBRUARY 2020