



**TC02233**

**Appeal number: LON/2007/0640**

*PROCEDURE – Failure to comply with unless order - application for extension of time to apply for reinstatement of appeal – application refused – application to reinstate appeal after strike out at hearing which Appellant did not attend – application refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GLOBALISED CORPORATION LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE GREG SINFIELD**

**Sitting in public in London on 15 June 2012**

**Mr Matthew Slater, counsel, instructed by the Khan Partnership LLP, for the Appellant**

**Mr Stuart Biggs, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

### Introduction

5 1. Globalised Corporation Limited ("GCL") applies to reinstate its appeal which was struck out by the First-tier Tribunal ("FTT") in directions released on 17 August 2011 following a hearing the previous day at which GCL did not appear and was not represented. The application to reinstate was made out of time and so GCL also applies for an extension of time in which to make such application.

### Evidence

10 2. I was provided with a bundle of correspondence and other documentation and a witness statement of Mr Ashok Chahal, the sole director of GCL. Mr Chahal did not give evidence at the hearing and was not subject to cross-examination. I find the facts material to the applications to be as set out below.

### Facts

15 3. In 2005 and 2006, GCL claimed repayments of VAT of £3,754,730. The Respondents ("HMRC") refused GCL's claims. The grounds for HMRC's decision were that GCL had entered into the transactions involving mobile phones which were connected with fraud (what is now generally referred to as "MTIC fraud") and that GCL, through Mr Chahal, knew or ought to have known that they were so connected.  
20 GCL appealed to the FTT.

4. At some point in 2009, GCL made an application that its appeal should be stayed behind another case which it appeared might be the subject of a reference to the Court of Justice of the European Union. The solicitors acting for GCL at the time withdrew the application and, by a Decision Notice released on 18 September 2009,  
25 the FTT directed that GCL should pay HMRC's costs of the application within 14 days of agreement or assessment or, in default, GCL's appeal would be struck out. Mr Chahal's evidence was that he did not attend the hearing and only found out about it through correspondence with HMRC some two weeks later. Mr Chahal stated that he had a PO Box Service for GCL's post and that, when he did not keep up the  
30 payments to the Post Office, his post was withheld until amounts owing were paid.

5. In August 2010, GCL's solicitors ceased to act for the company as it could no longer afford to instruct them.

6. On 29 November 2010 HMRC sent a letter to Mr Chahal at GCL's premises. The letter referred to previous correspondence with GCL's former solicitors and  
35 stated that Mr Chahal would be aware of the order to pay HMRC's costs. The letter stated that HMRC were prepared to accept £700 in full and final settlement.

7. Mr Chahal's evidence was that the first time he heard about GCL's liability to pay HMRC's costs was when he received a letter, dated 29 November 2010. I do not accept this evidence. I regard it as very unlikely that an established firm of solicitors,

5 experienced in MTIC case and other VAT appeals, would not have kept its client informed about the FTT's decision and subsequent correspondence with HMRC during the period when they acted for GCL. In a letter dated 14 December, sent from GCL's premises, to HMRC Mr Chahal agreed to pay £700 and asked to do so in three instalments.

8. By letter dated 4 January 2011 sent to Mr Chahal at GCL, HMRC accepted the proposal to pay by instalments. The letter set out the dates for the payments as 11 January, 11 February and 11 March. Mr Chahal stated that he never received the letter.

10 9. Mr Chahal received a letter dated 20 January 2011, sent to him at GCL's premises and his home address, from solicitors acting for HMRC. The letter stated that Mr Chahal had agreed to pay the first instalment of costs on 11 January but had failed to do so.

15 10. On 26 January, Mr Chahal telephoned the solicitor acting for HMRC. The solicitor's note of the call shows that Mr Chahal said that HMRC had never told him what dates to make the payments on. Mr Chahal was told that HMRC would be in touch to arrange immediate payment. Later that day, the solicitor sent Mr Chahal an email to which was attached the letter dated 4 January 2011 from HMRC. The email asked Mr Chahal to ensure that he settled the costs within the timeframes given or  
20 HMRC would apply for the appeal to be struck out.

11. On 27 January, Mr Chahal emailed the solicitor and asked how he should make the payments. The solicitor responded saying that a colleague from HMRC would be in touch. On 31 January, HMRC sent a letter to Mr Chahal at GCL which set out how the payments should be made. Mr Chahal stated that he never received the letter.

25 12. On 22 February 2011, Mr Chahal emailed the solicitor and said that he had still not received any information about how he should make the payments. On the same day, HMRC emailed Mr Chahal with a copy of the letter of 31 January and asking for a cheque in settlement as soon as possible.

30 13. On 15 March 2011, HMRC received a cheque for £460 from Mr Chahal in payment of the first two instalments.

35 14. HMRC had applied for the appeal to be listed for a hearing of their application to strike out the appeal due to non-payment of the costs. The hearing was listed for 28 March 2011 but, following receipt of the cheque for £460, HMRC's solicitor asked for the hearing to be vacated and copied the email to Mr Chahal in early April. On 5 April, Mr Chahal emailed the solicitor and said that he was struggling to make the payment but hoped that he would pay the remaining amount of £240 by 11 April ie one month late. No payment of £240 was made until June 2012.

40 15. Mr Chahal's evidence was that he had been unemployed throughout the period but obtained employment in mid-March 2011. Unfortunately, he was made redundant one month later but obtained further employment from 23 May 2011 and was still so employed at the date of the hearing before me.

16. On 19 April 2011, HMRC's solicitors wrote to Mr Chahal at his home address stating that they had written to the FTT asking for the appeal to be struck out. HMRC's solicitors followed up the letter to the FTT with a formal application to strike out the appeal on 31 May. The application was also sent to Mr Chahal at GCL  
5 by email and post and to his home address by post. Mr Chahal received the application to strike out the appeal but stated that, as a litigant in person, he did not know that a hearing would necessarily follow.

17. From June or July 2011, Mr Chahal's father, who lived in Dubai, became seriously ill. Mr Chahal's priority at the time was his father and he did not focus on  
10 GCL or the VAT appeal. Mr Chahal's father came to the UK in August 2011 and went into hospital, where Mr Chahal visited him daily.

18. On 16 August 2011, there was a hearing before the FTT, which Mr Chahal did not attend, of HMRC's application for the appeal to be struck out in accordance with the FTT's direction of 18 September 2009 on the ground that GCL had not paid all of  
15 HMRC's costs. As stated above, the FTT directed that the appeal be struck out.

19. The case file shows that the FTT sent the notice of hearing on 16 August 2011 and, after the hearing, the Direction to Mr Chahal at GCL's premises. On 11 November 2011, the notice of hearing was returned to the FTT marked "addressee gone away". On 30 November 2011, the Direction was also returned to the FTT. On  
20 that day, the FTT sent the Direction to Mr Chahal at his home address.

20. On 22 November 2011, Mr Chahal's father died. On or about 15 December, Mr Chahal flew to India with his father's ashes. He returned to the UK on 23 December.

21. Mr Chahal's evidence was that he only became aware of the hearing that had taken place on 16 August 2011 in mid-January 2012 when he paid the Post Office the  
25 outstanding fees for GCL's PO Box Service and he received a copy of the decision. I do not accept this part of Mr Chahal's evidence because, as stated above, the FTT's own file shows that the copy of the Direction which was sent to Mr Chahal in August was returned to the FTT in November and then re-sent to his home address. It follows that the Direction could not have been released to Mr Chahal by the Post Office in  
30 January. Even if I accept that Mr Chahal did not become aware of the Direction until mid-January 2012 (which I am prepared to do for the purpose of this application), I find that it was received at his home address in early December. It follows that Mr Chahal did not deal with the letter from the FTT containing the Direction until several weeks after it had been received.

35 22. On 24 February 2012, Mr Chahal instructed some new solicitors in relation to this application. On the same day, they wrote to the FTT to state that they would be applying to reinstate the appeal that had been struck out.

23. On 9 March 2012, solicitors for GCL lodged an application for the appeal to be reinstated with the FTT.

40 24. On 13 June 2012, HMRC received a cheque for £240 from Mr Chahal in payment of the third and final instalment.

## Relevant legislation

25. Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“FTT Rules”) provides

5 “(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

10 (b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

15 (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

20 (b) interprets any rule or practice direction.”

26. Rule 5(3)(a) of the FTT Rules provides that the FTT may extend or shorten time limits under the Rules.

27. Rule 8 of the FTT Rules relates to the striking out of a party’s case and provides that:

25 “(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

...

30 (5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant.”

28. At the hearing, both parties referred to rule 3.9(1) of the Civil Procedure Rules (“CPR”) which provides:

“(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 including

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;
- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol;
- (f) whether the failure to comply was caused by the party or his legal representative;
- (g) whether the trial date or the likely trial date can still be met if relief is granted;
- (h) the effect which the failure to comply had on each party; and
- (i) the effect which the granting of relief would have on each party.”

#### **Application for an extension of time**

29. Logically, I must consider whether to grant GCL an extension of time in which to apply for its appeal to be reinstated before I consider the substantive application, although many of the matters to be considered will be common to both applications.

30. In *Data Select v HMRC*, [2011] UKFTT 535 (TC), which concerned an application for an extension of the time for making an appeal, the FTT considered that, in the exercise of its discretion, it should have regard to the factors referred to in CPR rule 3.9(1) as well as overriding objective in rule 2 of the FTT Rules. When the case came before the Upper Tribunal, [2012] UKUT 187 (TCC), Morgan J held, at [37], that the approach of considering the overriding objective and all the circumstances of the case, including the matters listed in CPR rule 3.9, is the correct approach for the FTT to adopt in relation to an application to extend time. *Data Select* concerned an application for an extension of time in which to appeal but I do not consider that any different considerations should apply to an application for an

extension of time in which to apply to reinstate an appeal that has been struck out. In considering whether to grant an extension of time to GCL, I take into account the check list of factors in CPR rule 3.9 as a useful tool in exercising the FTT's discretion to give effect to the overriding objective under rule 2(1) of the FTT Rules to deal with cases fairly and justly.

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31. My comments on the different matters listed in CPR rule 3.9 in the context of GCL's appeal are as follows:

(a) I am not here concerned with the interests of justice generally (as to which see the discussion in relation to the application to reinstate below) but the interests of the *administration* of justice. I consider that such interests are an aspect of dealing fairly and justly with a case. Two aspects of dealing fairly and justly, as shown by rule 2(2)(c) and (e) of the FTT Rules, which seem to me to be relevant here are enabling parties to participate fully in proceedings and avoiding delay. In my view, Mr Chahal has, unfortunately for GCL, shown little interest in participating fully in the appeal. Understandably, he had another priority when his father was seriously ill in the UK but that does not explain his lack of action before and after that period and, in particular, his failure to avoid delay after his father had died. Although I accept that Mr Chahal, as an unrepresented appellant, did not know the time limit for making an application to reinstate, he cannot have failed to appreciate the need to act promptly when he read the direction sent to him at the end of November 2011. Mr Chahal did not read the direction until mid-January 2012 and then did nothing about it for six weeks. It is clearly in the interests of the administration of justice that there should be time limits and that they should be observed. Although some latitude may and should be given to a litigant in person, it is not in the interests of the administration of justice to allow time limits to be treated as nugatory.

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(b) As already discussed in (a), the application to reinstate the appeal was not made promptly. Contrary to what Mr Chahal said in his witness statement, the difficulties with the post being delivered to GCL's premises cannot be to blame for the failure to act promptly. I have found that the decision was received at Mr Chahal's home address in early December 2011 and that he did not deal with it until mid-January 2012. Even then, he delayed taking any action until 24 February when he instructed new solicitors. Whether judged from early December 2011 or mid-January 2012, the application was not made promptly.

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(c) I accept that Mr Chahal did not receive any notification of the decision to strike out until early December 2011. It follows that the failure to comply with the time limit for making an application to reinstate of 28 days from the release of the decision to strike out was not deliberate. However, in deciding whether to grant an extension of time, I must also consider whether any subsequent delay was intentional. I do not accept that the death of his father on 22 November 2011, excuses Mr Chahal's

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failure to act until 24 February 2012. I infer from Mr Chahal's failure to take steps to make an application to reinstate before 24 February 2012 that he did not regard such action as a priority and the failure was deliberate.

5 (d) For reasons given above, I consider that there is a good explanation for Mr Chahal's failure to make an application within 28 days of being sent the decision in August 2011 but I do not consider that he has given any satisfactory explanation of why he did not make an application promptly after receiving the decision to strike out in early December 2011.

10 (e) As is clear from the facts set out above, the strike out was made because Mr Chahal failed to make the instalment payments that he had agreed with HMRC. He paid the first two instalments late and made no attempt to pay the last instalment, due on 11 April 2011, even though he received the application to strike out his appeal on 31 May 2011, until  
15 shortly before the hearing of this application.

(f) As Mr Chahal was not legally represented at the time, the delay in making an application to reinstate was caused solely by him.

(g) The impact on the trial date or the likely trial date is not relevant in the case of GCL as no date for any hearing of the appeal has been set.

20 (h) It was not suggested that GCL's failure to apply to reinstate the appeal within the time limit had any particular adverse effect on HMRC.

(i) HMRC submitted that they would be prejudiced if the appeal is reinstated. I do not consider that granting the extension of the time limit for GCL to make an application or even reinstating the appeal would have  
25 any adverse effect on HMRC beyond the normal consequences of the appeal. The case is now rather old and there may be difficulties (eg in obtaining witness statements because of fading memories and personnel changes) as a result but those are not due to the delay in making this application and would probably have arisen if the case had not been struck  
30 out in August 2011 but had proceeded to a hearing. Clearly, the effect on GCL of not granting the extension of the time limit would be to deny it the opportunity to pursue its appeal and, with it, the chance of recovery of £3,754,730 VAT. In considering, the effect on GCL, it is appropriate to have some regard to the chances of success of the appeal but that is not  
35 possible in this case as there is insufficient material to do so because the appeal is still at an embryonic stage. I observe, however, that if Mr Chahal had believed that he had a strong case then it is strange that, having knowledge of an application to strike out his appeal at the end of May 2011, he took no action, even when he received a letter from the FTT  
40 in early December. Such inaction was, however, consistent with Mr Chahal's failure to comply with the FTT's direction to pay HMRC's costs at the risk of the appeal being struck out. For the purposes of this



application, I assume that GCL has an arguable case but no more than that.

### **Decision on application for extension of time**

5 32. Having considered the matters listed in CPR rule 3.9, it appears to me that the arguments for refusing an extension of time outweigh those in favour of granting it. Taking all the circumstances of the case into account and bearing in mind the overriding objective of the FTT Rules, I refuse GCL's application for an extension of time in which to apply for its appeal to be reinstated.

### **Application for reinstatement of the appeal**

10 33. In view of my decision that GCL should not be granted an extension of time, it is no longer necessary to consider whether GCL's appeal should be reinstated. In case I am wrong, however, I deal with the point briefly below.

15 34. Rule 8(5) of the FTT Rules simply states that a person whose appeal has been struck out may apply for it to be reinstated. Rule 8(5) does not provide any guidance as to when an appeal should or should not be reinstated. Some indication of the relevant considerations may be obtained from the analogous provision in rule 38 of the FTT Rules. Rule 38 deals with setting aside a decision which disposes of proceedings. Rule 38 relevantly provides as follows:

20 “(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if

(a) the Tribunal considers that it is in the interests of justice to do so; and

(b) one or more of the conditions in paragraph (2) is satisfied.

25 (2) The conditions are

(a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;

30 (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;

(c) there has been some other procedural irregularity in the proceedings; or

(d) a party, or a party's representative, was not present at a hearing related to the proceedings.”

35. In deciding whether to grant the application to reinstate the appeal and when considering the matters in rule 38 in that context, I bear in mind that I must give effect to the overriding objective of the FTT Rules to deal with cases fairly and justly.

5 36. The first step is to consider whether any of the conditions in rule 38(2), so far as they are relevant, are satisfied. Only if one or more of the conditions has been satisfied, do I need to consider whether it is in the interests of justice to reinstate the appeal.

10 37. I accept that the notice of the hearing of the application to strike out the appeal was not received by Mr Chahal. I also accept that condition (d) is clearly satisfied as CGL was not represented at the hearing of the strike out application on 16 August 2011. It follows that two of the conditions in rule 38 were satisfied.

15 38. Consideration of whether it is in the interests of justice to reinstate the appeal involves revisiting the decision of the FTT to strike out the appeal. If I come to the view that the FTT would have made the same decision even if it had the evidence and submissions on behalf of GCL which were before me then it would not be in the interests of justice to reinstate the appeal.

20 39. The FTT decided to strike out the appeal because GCL had failed to comply with the earlier order of the FTT that GCL should pay HMRC's costs. That earlier order made clear that the appeal would be struck out if GCL did not pay the costs. GCL did not do so. Even when, in January 2011, HMRC agreed that GCL could pay the costs in instalments, it did not do so until, in the shadow of an application to strike out the appeal, Mr Chahal paid two of the three instalments. At the time of the application, GCL had not paid the third instalment and Mr Chahal, who was aware that an application had been made (although not of the date of the hearing), had made no contact with HMRC or the FTT despite the fact that he had been in contact with the HMRC solicitor on several occasions in the months leading up to the application. Nothing put before me in evidence or submissions justified GCL's failure to pay the third instalment of the costs on time or leads me to conclude that the FTT would have reached a different decision had it heard such evidence and submissions in August 30 2011.

### **Decision on application for reinstatement**

40. On the basis of the facts of this case and for the reasons given above, my decision is that, even if I had granted GCL an extension of time in which to make it, GCL's application for the appeal to be reinstated should be refused.

### **35 Decisions**

41. For the reasons given above, my decision is that GCL's application for an extension of time to apply for the appeal that was struck out by a direction of the FTT released on 17 August 2011 to be reinstated is refused.

40 42. 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

5 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.

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**GREG SINFIELD  
TRIBUNAL JUDGE**

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**RELEASE DATE: 30 August 2012**