



TC04009

Appeal number: TC/2010/07075

PROCEDURE – whether time for service of witness statement should be extended – no – whether appeal should be struck out under Rule 8(3)(a) of Tribunal Rules – inadequate explanation for non-compliance, future compliance unlikely, prospects of success considered weak – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TRADIUM LTD

Appellant

- and -

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

TRIBUNAL: JUDGE SWAMI RAGHAVAN

Sitting in public at 45 Bedford Square, London on 10 June 2014

Mr Kamaljit Sood, manager of the Appellant for the Appellant

Mr Will Hay, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

5 1. The substantive issue in these proceedings concerns consolidated appeals by the appellant against imposition of conditions and revocation of registration under the Excise Warehousing (etc.) Regulations 1988 and cancellation of the appellant's VAT registration.

2. This decision concerns:

10 (1) the appellant's application of 23 January 2014 to extend the time by which it was to serve its witness statements from 31 January 2014 to 15 March 2014;

15 (2) whether in the event the extension of time was not granted the appellant's appeal should be struck out under Rule 8(3)(a) of the Tribunal's Rules because the appellant failed to serve its evidence by 31 January 2014. That direction was accompanied by a warning that if the direction was not complied with the proceedings could be struck out.

20 3. I had before me a bundle of documents containing the correspondence between the parties and the Tribunal and copies of the Tribunal's previous directions. Mr Sood, who attended on behalf of the appellant, declined the offer to give evidence on behalf of the appellant. He did however make various submissions which are considered below. Mr Sood is a manager of the appellant and had also written to the Tribunal in relation to the proceedings on behalf of Hyper Tax Consultants who were stated to be representatives of the appellant.

25 *Procedural background*

4. Much of the procedural background was set out in HMRC's skeleton argument which was filed in advance of the hearing. I am grateful for this and have drawn on it in preparing the procedural background below.

30 5. The appeals arise out of the appellant's business which appears primarily to involve trading in alcohol in duty suspension.

6. The appellant has brought three appeals, identified below, of which only the first two were the subject of the hearing of 10 June 2014:

(1) TC/2010/07075. This appeal ("the WOWGR appeal") is against:

35 (a) a decision to impose a restriction on the removal of goods under Regulation 17(3) of the Excise Warehousing (etc.) Regulations 1988 and

(b) the decision to revoke the Appellant's 'WOWGR' approval under section 100G of the Customs and Excise Management Act 1979.

(2) TC/2011/08946. This appeal (“the VAT appeal”) is against a decision, made under paragraph 13(2) of Schedule 1 to the Value Added Tax Act 1994, to cancel the appellant’s registration for VAT.

5 (3) TC/2011/03164. This appeal is not the subject of the present proceedings. While the Respondents referred in their skeleton argument to aspects of the appeal, as they say it demonstrated that the appellant has repeatedly failed to
10 comply with the procedure rules, and directions of the Tribunal, and that the appellant had they say been found to have acted unreasonably in the way it has pursued its case it is included in this decision by way of background as the
15 appellant referred to it in his submissions. The appeal was against the Respondents’ decision to issue an assessment that the appellant was liable for duty in the sum of £412,214, payable on a quantity of alcohol which the appellant had sold and which had subsequently been diverted out of duty suspension. The Respondents refused the Appellant’s application for ‘hardship’ and the Tribunal (Judge Mosedale, 4 May 2011) refused to consent to the appeal proceeding without the appellant having first paid the relevant duty.

7. On 8 November 2010 the appellant filed its notice of appeal in the WOWGR appeal.

8. On 5 September 2011 the appellant lodged its notice of appeal in the VAT
20 appeal.

9. The Respondents’ Statement of Case in the WOWGR appeal was lodged on 25 February 2011. The appellant lodged its list of documents on 29 June 2011. The Respondents lodged their Statement of Case in the VAT appeal on 5 March 2012 and their list of documents on 2 April 2012.

25 10. Following a case-management hearing on 17 July 2012 submissions were invited from the parties as to whether the VAT appeal and the WOWGR appeal should be consolidated.

11. Following receipt of the submissions on 22 August 2012 I directed that the two
30 appeals be consolidated. HMRC were directed to serve a consolidated statement of case by 4 October 2012; the appellant was permitted to serve amended grounds of appeal by 15 November 2012; and each party was directed to deliver a consolidated list of documents by 13 December 2012.

12. On 4 October 2012 HMRC served its consolidated statement of case.

13. On 27 November 2012 Mr Sood wrote to enquire as to “the status of the date of
35 the appeal” and to ask for a date in the second half of February. He stated “I will need at least a month to do research to find authorities to back up my appeal – given that I can only devote part time to this work.” The Tribunal wrote to him on 6 December 2012 to say the hearing would not be listed until the parties had served their lists of documents and their witness statements and that according to the directions of 22
40 August 2012 lists of documents were due no later than 13 December 2012.

14. On 6 December 2012 the Tribunal wrote to HMRC to ask it to clarify within 14 days its case in relation to abuse and to an allegation in its statement of case that the right to be registered for VAT had been “utilised solely or significantly for abusive practices (i.e. MTIC fraud)...” and in particular to make it clear whether and if so
5 what allegations were being made in relation to the appellant’s or Mr Sood’s knowledge of abusive practice. Following a request for an extension of time on 21 December 2012 and again on 21 February 2012 which was granted HMRC served their amended Statement of Case within the extended deadline on 21 March 2013. The part of the case concerning the doctrine of abuse was removed.

10 15. On 27 March 2013, I amended the directions. Each party was to serve its consolidated list of documents by 18 April 2013. The appellant was to serve its witness statements by 16 May 2013; HMRC was to serve its witness statements by 13 June 2013; and the appellant was to serve any witness statements in reply on 11 July 2013.

15 16. On 4 April 2013 Mr Sood e-mailed the Tribunal to inform it of practical difficulties in meeting the dates of directions. He complained that HMRC’s statement of case had missed out certain matters. He also asked how he could call witnesses from HMRC to question them. He asked the Tribunal to take into account that he was handling the case in his spare time which was becoming increasingly rare, and also
20 for the Respondents to pay the costs of legal representation. He stated:

“As of know, I am occupied in developing my new business until the end of this month and may have to travel to India on another matter of litigation to give evidence – the older businesses having been totally ruined by the abuse of HMRC which the matter under appeal in this case. I do not have time to respond by April 18. Please given me an
25 extension until August 15, provided that I can receive a revised statement from HMRC by April 15.”

17. On 18 April 2013, HMRC filed their consolidated list of documents. In a letter dated 26 April 2013 to the Tribunal and copied to the appellant HMRC stated they did
30 not object to the appellant being granted an extension until 15 August 2013 to file his list of documents and witness statements given it was a first request. They also indicated in relation to the appellant’s points on the statement of case that they did not intend to amend it further and the matters could be set out in the appellant’s own pleadings and that the merits of HMRC’s case were properly a matter for the
35 substantive hearing. They indicated they would file their witness statements according to the directions (erroneously stating the deadline as 17 June 2013 instead of 13 June 2013 – no point was taken on this by the Tribunal or the appellant).

18. On 17 June 2013 HMRC filed five witness statements and applied for an extension of time to file a further two statements.

40 19. Taking account of the appellant’s e-mail of 4 April 2013, and HMRC’s correspondence of 26 April 2013 and 17 June 2013, on 24 September 2013 the Tribunal issued further directions. These allowed HMRC until 9 October 2013 to file the remainder of its witness statements. HMRC filed two further witness statements

on 9 October 2013. The appellant was to file its list of documents by 6 November 2013. Point 3 of the directions provided:

5 “Not later than 6 November 2013 the appellant shall send or deliver to the Respondents statements from all witnesses on who evidence it intends to rely at the hearing setting out what that evidence will be (“witness statements”) and shall at the same time confirm to the Tribunal the names of the witnesses it intends to call”

20. In the letter enclosing the directions to the appellant the Tribunal explained the procedure for applying for witnesses to be summonsed and asked the appellant to
10 notify if it intended to apply for any such summons before 6 November 2013 in order that this could be taken account of in making arrangements to list the hearing.

21. The notes to the directions explained that the various matters which the appellant had raised in relation to documents and evidence that HMRC had not mentioned were matters the appellant could address by variously, evidence it could
15 bring before the Tribunal, its cross-examination of HMRC witnesses and arguments it could make at the substantive hearing.

22. On 18 November 2013, not having received any communication from the appellant, the Tribunal wrote to it to inform it that the appellant had not complied with points 2 and 3 of the directions and to do so immediately.

20 23. On 22 November 2013, Mr Sood e-mailed the Tribunal. He mentioned that the case is now being handled by himself personally instead of Hyper Tax Consultants. He stated:

25 “I have been unable to handle the burden of this litigation at the appointed times because I have to provide for my daily living having been deprived of my ability to generate incoming earning revenues, the subject of the current litigation.”

24. He sought additional time. In a further e-mail sent the same date he added that he was in India and was “unable to attend to the details of the case sitting from here.”

25. On 26 November 2013 the Tribunal e-mailed Mr Sood to ask him to specify
30 how much extra time he was seeking.

26. On 2 December 2013 he replied stating that given his availability back in London he was unlikely to be back until about February 15 and suggested March 15 as a date. His e-mail again mentioned various documents missing from HMRC and stated that such documents were important for him to prove his assertions.

35 27. On 4 December 2013, HMRC wrote to the Tribunal objecting to an extension beyond January 2014.

28. On 4 December 2013 the appellant e-mailed the Tribunal asking the Tribunal to take into account that the documents missed out by HMRC were missed by design and intended to mislead the Tribunal.

29. On 16 December 2013 the Tribunal issued an unless order in the following terms:

5 “UNLESS no later than 31 January 2014 the appellant complies with point 2 (service of consolidated list of documents) and point 3 (service of witness statements) of the Tribunal’s directions of September 2013 THEN these proceedings MAY be STRUCK OUT without further notice to either party.”

10 30. The reasons accompanying the direction explained why the extension to 15 March 2014 had been refused on the basis that the appellant had not provided an adequate explanation justifying an extension of time to 15 March 2014 (the former representative and the appellant’s manager being the same individual, Mr Sood). The reasons also explained that in relation to the documents Mr Sood was seeking, that no documents had been specified in a disclosure application along with grounds and that no explanation had been given as to why not having those documents prevented the
15 appellant from making any progress with complying with its obligations under the directions. The reasons explained that an extension to 31 January 2014 had been given as HMRC had not objected to this length of extension but that given the lack of progress on the part of the appellant it was considered appropriate that if the direction was not complied with it was appropriate for the direction to warn that non-
20 compliance could lead to the appeal being struck out.

31. On 23 January 2014 the appellant sent in a list of documents. This also contained of list documents the appellant sought from HMRC and noted that the appellant sought to call ten witnesses from HMRC giving their names. Under the heading “Witness evidence” Mr Sood stated:

25 “The appellant is seeking a statement from witness but has been unable to contact him. He seeks leave of the court to supply his evidence by March 15, 2014.”

32. In his covering letter Mr Sood again drew attention to the disparity of resources as between himself and HMRC. He stated:

30 “ I have been given just four month, working on my own, in spare time, including holiday period of Christmas to counter the originally, by implication, non-existent evidence...”.

33. He also stated that he had had to undergo considerable expense of loss of earnings to comply with directions of March 27, 2013 through losing an important
35 business partner who had turned to someone else for a business collaboration.

34. On 31 January 2014 the Tribunal wrote to Mr Sood to ask him who his witness was, details of his attempts to contact the witness and an explanation of why he was unable to contact the witness. In relation to his request for HMRC witnesses, the Tribunal reminded him of the procedure for applying for witness summons it had set
40 out in its previous letter. Mr Sood replied on 14 March 2014 in relation to reasons for seeking the witness summons and stated he did not undertake to pay the witness’ expenses. He did not respond with any further details as to the witness he was to provide a statement from.

35. On 13 February 2014 HMRC wrote to the Tribunal objecting to the appellant's applications.

36. No witness statements were filed by the appellant by 31 January 2014.

5 37. On 5 March 2014 The Tribunal listed a hearing of the appellant's application to extend time of 23 January 2014 and HMRC's objection and as appropriate on the issue of strike out. On 24 March 2014 the parties were notified of the hearing date.

Parties' submissions

38. The appellant's arguments in summary were as follows:

10 (1) Mr Sood needed more time. In particular he needed more time to refer to references and case-law which were not on the internet. Libraries were generally shut after 6pm and Mr Sood also had to earn a living. He needed time to prepare bundles. (It was made clear to Mr Sood at hearing that he was not being directed to prepare bundles (the directions placed this requirement on the HMRC)). In terms of assessing any delay the starting point should be September
15 2013 when the case got moving again. The delay of 2-3 months caused by the extension he was seeking was not significant.

(2) He did not have teams of lawyers helping him and the resources HMRC had. He was preparing the case on his own.

20 (3) Vital documents and information had been withheld by HMRC. He suspects HMRC were relying on incorrect intelligence but without seeing that he could not know. He wanted to call numerous further HMRC witnesses. Another element of the case related to an assessment for excise duty of £412,000. The assessment was raised and withdrawn and then reissued in 2011. There was a CVA in October 2010 and HMRC had not provided any documents
25 in relation to that.

(4) HMRC abused their power, acted frivolously and have rogue officers in their midst.

30 39. HMRC argue the appellant has had more than ample time to prepare its witness statement and the explanation for needing more time is inadequate. They refute the suggestion that vital documents have been withheld and say in any case that this does not explain why the appellant could not provide its evidence on the various matters raised by the appellant to do with visits to it, and communications with it which an officer of the appellant would be well able to speak to. The allegations of abuse etc. were groundless. It can be seen from the Statement of Case that this is not a case
35 where HMRC's decisions are demonstrably unreasonable on the face of it. The appellant's grounds of appeal are untenable and it should be inferred from the lack of a prospect of any evidence being lodged that the appellant has no evidence to contradict HMRC's or none that would stand up to scrutiny.

Should time be extended?

40. Under Rule 5(3)(a) of the Tribunal's Rules the Tribunal's case management powers include the power to:

“...extend...the time for complying with any...direction...”

5 41. Under Rule 2(3) the Tribunal must seek to give effect to the overriding objective when it exercises any power under the rules.

42. Rule 2(1) provides that the overriding objective of the Rules is to enable the Tribunal to deal with cases fairly and justly. Rule 2(2) provides that this includes so far as is relevant:

10 “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 resources of the parties;

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

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

...

e) avoiding delay, so far as compatible with proper consideration of the issues”

20 43. For the reasons set out below I refuse the appellant's application to extend time for service of its witness statements.

44. No new information has been provided since the refusal to extend time on 16 December 2013 which would persuade me that the extension ought to be granted. On the contrary, what information has been provided, and the lack of relevant explanation point even more strongly towards not granting an extension in my view.

45. The appellant's explanation that he was away in India and could not deal with the matter from there was inadequate. The appellant was aware that there was a deadline for filing witness statements from September 2013 and ought to have taken this into account in organising any travel commitments and access to any necessary documents. The appellant has not given any adequate explanation for why its witness statements could not have been filed by 31 January 2014 and why an extension to 15 March 2014 was justified.

46. Although I take into account the appellant does not have the same level of resources to prepare cases that HMRC has it does nevertheless have choices as to how to allocate the time and resources it does have to progressing its own appeal. It has chosen to rely on Mr Sood who it appears has other calls on his time. Even if Mr Sood's submission that his preparation has to be fitted around earning a day to day living (I received no evidence on this) is accepted I would expect to have seen some progress albeit incremental having made with the case. Instead no progress has been made in the preparation of the witness statements.

47. In terms of amount of time the appellant can be considered to have had at its disposal HMRC take the dates the appeals were filed as the starting point. Accordingly they say the appellant had since November 2010 in relation to the VAT appeal and from September 2011 in relation to the WOWGR appeal to prepare its witness statements. The appellant says, in taking account of any delays I should take September 2013 as the starting point.

48. The date I will take as when Mr Sood could set about preparing his case is 21 March 2013 which is when HMRC filed their amended Statement of Case. That is when the appellant would be on notice of HMRC's case.

49. The appellant has been on notice of the need to file witness statements since directions were issued on 27 March 2013. Having been granted an extension to file these by 15 August 2013 there is no indication the appellant used this time to set about complying with this step. Having been told that in September 2013 that the deadline was revised to 6 November 2013 there is no indication the appellant made any further efforts to comply, or that it engaged with the evidence that HMRC had in the meantime served. An extension of time application was only provided once the Tribunal had written to the appellant to notify it that directions had not been complied with. There is no indication of what efforts were made to comply with the direction in the period up to 31 January 2014.

50. That on any view, even according the appellant some latitude in having used its manager to conduct proceedings is more than ample time. The appellant simply has not organised its time and resources in such a way to comply with the Tribunal's directions.

51. Mr Sood's argument that he has had difficulties accessing reference books in the library which are not on the internet does not explain why at the very least Mr Sood has not been able to provide a statement setting out his own evidence or dealing with matters of evidence he contests in terms of the evidence HMRC have served. As pointed out by HMRC even in relation to the matters which he has raised which have he says been omitted from HMRC's statement of case, if the appellant feels these are relevant many of these are things which the appellant is able to deal with in its evidence. Mr Sood's view that the statement of case has missed out various matters has not stood in the way of the appellant setting out its evidence. As an example Mr Sood in his e-mail of 4 April 2013 takes issue with HMRC not having mentioned two visits by HMRC Officer Hunjan, a "whole bunch of invoices" Mr Sood says he provided to HMRC Officer Tromans as evidence that he was trading, and a multitude of calls Mr Sood says he tried to make to Officer Tromans from 6 August to the end of the month. These are all matters that an officer of the company or indeed Mr Sood could give evidence on.

52. To the extent Mr Sood wishes to call HMRC witnesses. This process was explained to him the Tribunal's letter of 24 September 2013 and he was asked to respond by 6 November 2013. The names of the witnesses he intended to call were set out in 23 January 2014. No reasons as to their relevance was provided and Mr Sood

refused to undertake to pay their travelling expenses on the basis that that the witnesses were acting in their official duties.

53. Despite the Tribunal's request Mr Sood has provided no further detail on who the witness was that he was intending to get a statement from, what attempts had been made to contact such witnesses and why a statement had not been produced.

54. In relation to the documents Mr Sood was seeking Mr Sood did not provide reasons explain the relevance of those to the appeal either in his letter of 23 January 2014 or in earlier requests.

55. That the above matters (HMRC witnesses, and documents) remained outstanding in the appellant's view did not explain why it could not set about preparing its witness statements.

56. His arguments in relation to the CVA and the assessment as HMRC point out post-date the decisions under appeal in relation to these proceedings and are simply not relevant to this appeal.

57. There is nothing in Mr Sood's submissions to indicate that he has been making progress albeit slowly with preparation of the statements and that giving more time would result in a completed statement. He has made no progress at all.

58. Further there is no reason in my view to suppose that given the extra three months he was seeking that Mr Sood would have made more progress. Despite the Tribunal's enquiries, he has not identified the witness his own correspondence referred to. As at the hearing on 10 June 2014 he has been vague about what witness statements he does intend to produce. Mr Sood mentions the possibility of two "commercial" witnesses who would confirm what he was saying, but he had not even approached them yet.

59. In relation to Mr Sood's point on the extension of 2-3 months not being significant, if the Tribunal was satisfied there was a good reason for the delay and that reasonable steps were being taken to ensure that the direction would be complied with that might have some merit, but neither of those elements are present here. As of June 2014 no statements had been provided. There is no credible plan which would lead me to believe the statements would be produced if an extension of 2-3 months were granted.

60. Mr Sood's answer to this inactivity is that he interpreted the Tribunal's direction of 16 December 2013 as prohibiting him from preparing his evidence after 31 January 2014. As HMRC point out that is not a reading of the direction that a reasonable person would take. The direction cannot reasonably be seen as telling Mr Sood to down tools (assuming they had been picked up in the first place).

61. In any event it should have come as no surprise to Mr Sood that a hearing having been listed to consider whether a time extension would be granted, and in relation potentially to non-compliance with a direction that he might be expected to

give an account of his readiness to comply with the direction sought to be extended or whose non-compliance was in issue.

5 62. No adequate reason has been provided. There is no indication that Mr Sood was taking steps which would have resulted in compliance by the date sought. There has been no indication that he has used the time in any meaningful way to progress his case or that if time was granted anything would change in Mr Sood's circumstances or the arrangements for handling the appellant's appeal such that the appellant's witness statements would be prepared and served.

10 63. Taking account of the need to avoid delay, and to ensure compliance with directions, the lack of any credible explanation for why extra time is required or that it would realistically be made use of, it would not be fair and just to extend time on the facts of this case.

Should the appeal be struck out?

15 64. It follows from the above the appellant is in breach of the direction, non-compliance with which could result in the appeal being struck out.

65. Rule 8(3)(a) of Tribunal's Rules provides:

“The Tribunal may strike out the whole or a part of the proceedings if

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20 (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;...”

66. There is no dispute that the Tribunal's direction of 16 December 2013 warned that non-compliance could lead to the appeal being struck out or that it was received by the appellant. The issue is one of how the Tribunal should exercise its discretion.

25 67. In exercising the discretion I take account of the overriding objective and all the circumstances of the case.

30 68. Mr Sood referred to ECHR Article 1 Protocol 1 and Article 6. He did not elaborate on the particular relevance of those rights (interference with property rights and right to a fair hearing). He said they were matters of primary law in contrast to the Tribunal rules. I consider that to the extent the appellant's human rights are engaged these can be taken account of adequately in exercising the Tribunal's discretion in accordance with the overriding objective in dealing with the case fairly and justly.

35 69. On the one hand there is the need to ensure that proceedings before the Tribunal are conducted in an orderly and efficient way and so as to avoid delay so far as possible. Where directions are not complied with it is necessary to consider the explanation for that, and the likelihood of future compliance.

70. In these respects there is a large degree of overlap with the factors considered above such as the lack of a good explanation for the non-compliance and concerns

with whether the appellant will make any meaningful progress with its case if is allowed to proceed and concerns about delay. All these factors which are discussed above point against allowing the case to proceed.

5 71. In considering whether to strike the case out a further factor to consider is the prejudice to the appellant and that will depend on what view may be taken, so far as is possible at an interlocutory stage on the strength of the appellant's case.

72. The burden in both appeals lies on the appellant.

10 73. I have reviewed the appellant's grounds of appeal and HMRC's consolidated statement of case. I am aware that HMRC have served seven witness statements from its officers although I have not been invited to and therefore have not considered the detail of those.

15 74. In relation to the VAT appeal the grounds of appeal refer to the power being unjustified, abusive, disproportionate and for no objective purpose, as well as being a "bad an unimaginative use of discretion". Mr Sood's submissions at the hearing continued very much in the same vein.

20 75. In relation to the WOWGR appeal and the imposition of conditions the appellant's grounds of appeal refer to the lack of notification by HMRC of any wrongdoing on their part, their failure to prevent the movement of goods if they had concerns, the adverse commercial effects of HMRC's decision, and an allegation that HMRC had abusively targeted his alcohol operations in the full knowledge that nothing unlawful had been done. In relation to the revocation of the WOWGR certificate he disputes HMRC's assertion that 16 movements of duty suspended goods were not delivered to the declared destination, and says that even if they had not been delivered then HMRC ought to have brought this to the appellant's attention. Even if
25 the goods were not delivered it is stated that the appellant has all the documentary evidence of goods having...[the remainder of the text is cut off.]

30 76. HMRC's consolidated statement of case sets out a chronology of the visits HMRC made to the appellant and its communications with the appellant, and the actions of the appellant. A number of the details refer to communications that are said to have taken place with Mr Sood. They say the appellant's actions constituted a reasonable cause for the placing of conditions and that there are a number of deficiencies in the appellant's compliance with the relevant requirements for registered owners of duty suspended goods including those relating to the appellant's stock tracking, record-keeping, accounting, and due diligence procedures, and its
35 failure to make any or sufficient enquiries before releasing goods which mean that HMRC's decision to revoke the registration was reasonable. In relation to the VAT de-registration the statement of case refers to the records relating to the supplies of iPads being alien to the wholesale business of own-branded wine which the appellant was know to operate in and the lack of documentation being provided upon request in
40 relation to the supply of iPads and a concern that the appellant's VAT registration had been "hi-jacked".

77. HMRC have served witness statements from a number of the officers mentioned in the consolidated statement of case.

78. There is nothing on the face of HMRC's consolidated statement of case which bears out the appellant's allegations (although I take into account that assuming the appellant's allegations of abuse of power were well-founded it might be surprising if they did). More in point is that there is nothing on the face of it which suggests the appellant is likely to win without advancing evidence on its behalf. The documents on the appellant's list of documents are principally communications between HMRC and the appellant. There is no indication they contain evidence relating to e.g. due diligence in relation to the WOWGR appeal, or in relation to showing supplies which were made in relation to the VAT appeal. HMRC's decision might prove vulnerable if the appellant were to provide evidence which persuaded a Tribunal that HMRC's version of events were incorrect but in the absence of such evidence there is nothing to suggest the appellant, if struck out would be losing the right to fight a case which it had a reasonable chance of winning.

79. On the basis of information before me the merits do not point to a strong case where there would be an injustice in striking the matter out for non-compliance.

80. An alternative to striking the case out would be to let the case proceed without permitting the appellant to rely on evidence. That would be unsatisfactory in my view for the following reasons. From the correspondence the appellant has indicated it does want to put forward evidence but needs more time. It is not saying that it has no evidence to offer. In relation to both issues in the appeal there is no indication that HMRC's version of their visits and communications with the appellant is agreed with the appellant. It is difficult to see how the appellant can make out its case without providing an explanation of why HMRC were wrong to think the appellant was not "fit and proper", and that it was making supplies without offering evidence as to for example the appellant's due diligence procedures, systems and controls, the supplies it made and its version of the communications which took place between itself and HMRC. Allowing the appeal to go forward, with the resulting time and cost resources both for the other party and the Tribunal in circumstances where the appellant makes very serious allegations, has indicated it has witness evidence, but where it has not made any effort to put that before the other party would not be in the interests of justice in my view.

81. It is clear to me that Mr Sood feels that he has been the victim of great injustice through the decisions HMRC have taken. The prejudice to the appellant in striking out would be to lose the opportunity to challenge what he sees as an unjust use of governmental power. But appeals before the Tribunal are not a vehicle to be used for one party to simply go on making and repeating allegations. There must come a time when if those allegations are to be pursued that steps are take to offer substantiation for them which can be evaluated by the other party and in due course by the Tribunal if the case proceeds. Mr Sood's efforts in putting the appellant's case together have in my view been in inverse proportion to the vigour with which he makes his allegations. Mr Sood has had more than sufficient time to put his case together but it seems to me has laboured under the misapprehension that nothing more than minimal effort in

responding to reminders from the Tribunal to comply with directions whose purpose is to help get the case ready for substantive hearing is required on his part.

5 82. The reference to a change in agent as a reason for extending time in circumstances where the very same person, Mr Sood, has been handling the case; referring to needing time to go to the library to look up unspecified references which are not on the internet; referring to a witness but not then giving details of them when requested strike me as spurious. They appear to me to be attempts to deflect attention from the appellant's lack of proper engagement with its appeal. They are indicative of an appellant who is taking a cavalier approach to litigation despite the serious 10 allegations being made against the other party.

Conclusion

15 83. In the circumstances the appeal and in particular the absence of an explanation for non-compliance with a direction which warned that failure to comply could lead to a strike-out, the lack of confidence that the direction would be complied with in the future, and given the merits of the appellant's case appear weak I consider it is in the interests of justice to strike the appeal out.

84. The appellant's appeal is struck out.

Reinstatement and appeal

20 85. Rule 8(5) allows the appellant to apply for the reinstatement of its appeal. Rule 8(6) states that an application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sends notification of the striking out to the appellant.

25 86. 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.

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**SWAMI RAGHAVAN
TRIBUNAL JUDGE**

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RELEASE DATE: 12 September 2014