TC04552

Appeal number: TC/2013/05407

PROCEDURE – costs – whether representative duly authorised – yes – whether appellant should be permitted to make an application for costs out of time –*Leeds City Council *and* McCarthy & Stone *considered* – Leeds City Council *followed – principle in* Data Select *applied – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

TECHNETIX LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN RICHARDS

Sitting in public at The Royal Courts of Justice, London on 30 June 2015

Stephen Cock of The Customs Consultancy for the Appellant

Sian Reeves, instructed by the General Counsel and Solicitor to HM Revenue & Customs, for the Respondents

DECISION

1. The appellant has applied for an order that the respondents pay the appellant's costs incurred in connection with an appeal to this Tribunal. That application has been made out of time. Therefore, as a preliminary matter, the appellant requests the Tribunal to exercise its powers under Rule 5(3) and/or Rule 7(2) of the Tribunal Rules to grant an extension of time in which to make the application.

Background

2. On 5 February 2013 the appellant applied to the Tariff Classification Service of HMRC for a series of Binding Tariff Information ("BTI") rulings on the classification for customs duty purposes of a series of data networking products (the "Products").

3. In response, HMRC issued a series of BTI notifications on 2 April 2013. The letter accompanying those notifications stated that the rulings given were "in line with decisions issued by other Member States, for which we cannot be divergent [*sic*]". The appellant did not agree with the classifications that HMRC determined to adopt. On 13 August 2013, the appellant appealed to the Tribunal against HMRC's decision. The appeal was allocated to the "standard" category.

4. The appellant commissioned an expert witness report from Dr Roger Blakeway in relation to the function of the Products and served that on HMRC on 14 March 2014.

5. The appellant considered that Dr Blakeway's report made it clear that its appeal was bound to succeed. On 13 May 2014, the appellant wrote to Jennifer Pollock at HMRC inviting HMRC to concede the case. On 12 June 2014, Ms Pollock replied saying that HMRC would not be conceding.

6. On 23 June 2014, the appellant wrote to Sue Davnell, Head of Customs Enforcement at HMRC, again requesting HMRC to concede. Valerie Smith of HMRC replied to that letter on 1 August 2014 explaining that HMRC would not be conceding. In her letter she explained that German, Dutch and Polish BTIs had been identified that supported the classification of the Products for which HMRC were contending. She also outlined her understanding that the dispute "is more about legal interpretation i.e. what is the proper scope of the tariff codes in question rather than what is the use and function of the product".

7. On 8 August 2014, HMRC applied to the Tribunal for Dr Blakeway's expert evidence to be excluded. The grounds for that application were, *inter alia*, that the Tribunal had not given any direction permitting expert evidence to be served and that HMRC did not consider expert evidence to be necessary. HMRC also noted that Dr Blakeway's report included passages giving his opinion on the correct customs duty classification which was beyond his expertise and was, in any event, a matter for the Tribunal.

8. On 8 September 2014, the appellant sent the Tribunal its reasons why Dr Blakeway's report should be admitted as evidence. An oral hearing was arranged for 7 October 2014 to deal with HMRC's application to exclude Dr Blakeway's evidence. However, HMRC decided not to proceed with its application but reserved the right to draw the Tribunal's attention to passages of Dr Blakeway's report in which HMRC considered he was straying beyond his area of expertise. HMRC did not apply to serve expert evidence of their own.

9. A two day hearing to consider the substantive appeal was listed for 29 to 30 October 2014. The appellant instructed Counsel to conduct that hearing on its behalf.

10. On 23 October 2014, HMRC informed the appellant that "[h]aving considered the Appellant's skeleton argument and reviewed the papers, HMRC has decided no longer to defend the appeal". HMRC duly gave notice of withdrawal to the Tribunal.

11. On 28 October 2014, the Tribunal sent a notice under Rule 17(2) of the Tribunal Rules to Mr Cock and Sarah James of The Customs Consultancy. That letter contained the following sentence:

> If you have any further application with regards [*sic*] to this appeal it should be made within 28 days from the date of this letter, in the absence of which the file will be closed.

12. On 24 November 2014 the appellant wrote to Laura Lucking, Head of Customs Enforcement and Duty Liability at HMRC, to complain of HMRC's conduct in relation to the appeal. In that letter, the appellant asked HMRC to pay the appellant's costs (stated to be £20,000 in respect of management time, £10,000 in consultancy fees and £16,000 of legal fees). However, the appellant did not at this stage make any application to the Tribunal for costs.

13. On 11 February 2015, Ms Lucking replied to the appellant's letter of 24 November 2014. In response to the request that HMRC pay the appellant's costs, Ms Lucking wrote:

> I am sorry, but I do not consider that HMRC should be responsible for the costs incurred by Technetix in this case. It was open to your representative to ask the Tribunal to make an order for costs. Any such application including a schedule of the costs claimed had to be sent to the Tribunal and HMRC no later than 28 days after the tribunal decision (28 October) i.e. by 25 November 2014. I understand that there may be some flexibility in that deadline and given that you did write to me on 24 November, there may be a chance that the Tribunal would allow an out of time application. However, that application would need to demonstrate that HMRC had acted unreasonably in either bringing, defending or conducting the proceedings. I do not consider that to be the case.

14. On 10 March 2015, the appellant made an application to the Tribunal for its costs. Mr Cock accepts that the information submitted with that application would not have enabled the Tribunal to make a summary assessment of costs if it decided to do

so, and therefore accepts that the application, as well as being made outside the time limit set out in Rule 10(4) of the Tribunal Rules, did not comply with Rule 10(3)(b).

15. On 30 June 2015, Mr Cock prepared a supplemental skeleton argument dealing specifically with HMRC's objections to the appellant's costs application made out of time. Attached to that skeleton argument was a completed Form N260 dated 29 June 2015 which Mr Cock submitted, but Miss Reeves disputed, complied with Rule 10(3)(b) of the Tribunal Rules.

Evidence and procedural matters

Mr Cock's status as representative

16. No employee, director or other agent of the appellant attended the hearing. Miss Reeves made no objection to the Tribunal hearing Mr Cock. However, she said that since Mr Cock did not have rights of audience under the Courts and Legal Services Act 1990, she reserved the right to make representations as to whether Mr Cock's fees should be taken into account if the Tribunal did decide to award costs against HMRC.

17. I was satisfied that the appellant had appointed Mr Cock as its representative pursuant to Rule 11(1) of the Tribunal Rules in connection with its substantive appeal to the Tribunal. The Tribunal had addressed its notification under Rule 17(2) of 28 October 2014 to Mr Cock, demonstrating that it regarded Mr Cock as a duly appointed representative. There was no suggestion that the appellant had revoked that appointment. Rule 11(1), however, provides that a party may appoint a representative to represent that party "in the proceedings". There is, therefore, a technical question as to whether HMRC's withdrawal brought the "proceedings" to an end so that Mr Cock could no longer be regarded as a duly authorised representative for the purposes of this costs application. If Mr Cock's appointment as representative had come to an end, Rule 11(5) of the Tribunal Rules would not give me the power to agree to hear submissions from him since there was no other agent, officer or employee of the appellant company accompanying him at the hearing.

18. Rule 11 does not itself give any guidance on when the "proceedings" are to be taken as coming to an end and I was not referred to any authority on this issue. Some assistance can be found in Rule 10(4) of the Tribunal Rules which provides as follows:

> (4) An application for [an order for costs] may be made at any time during the proceedings but may not be made later than 28 days after the date on which the Tribunal sends –
>
> (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
>
> (b) notice under rule 17(2) of its receipt of a withdrawal which ends the proceedings.

19. However, Rule 10(4) sends out somewhat mixed messages. Rule 10(4)(b) suggests that "proceedings" end when the Tribunal sends a notice of withdrawal under

Rule 17(2). However, if that is the case, a party to an appeal would not be able to make an application for costs the day after receiving a notice of withdrawal since, although it would be within the 28 day time limit, it would not be making its application "during the proceedings". That clearly cannot be the intention of the rules.

20. I have concluded that the "proceedings" referred to in Rule 11 embrace matters relating to the substantive appeal (including interlocutory matters) as well as any matters procedurally connected with the substantive appeal, even if they fall to be dealt with after the substantive appeal has been concluded. I have therefore determined that Mr Cock's original appointment as a representative pursuant to Rule 11(1) enabled him to represent the appellant at this hearing. I am reinforced in that conclusion by Rule 2(3) of the Tribunal Rules which requires me to have regard to the "overriding objective" of the Rules set out in Rule 2 when interpreting any rule or practice direction. An interpretation that a representative's appointment terminated immediately following a withdrawal by either party would require existing representatives' appointments to be renewed before they could make subsequent applications. That itself would involve excessive formality. Moreover, in cases where the appointment is not renewed there would be additional costs and delays as hearings are postponed to permit renewal to take place. All of these are matters to be avoided where possible in accordance with the overriding objective.

Evidence

21. Neither HMRC nor the appellant produced witness statements as evidence. Both Mr Cock and Miss Reeves based their submissions on a bundle of documentary evidence and a bundle of authorities. Miss Reeves objected to passages of Mr Cock's submissions dealing with the reasons why the appellant had made its application for costs out of time. She said that these were mere assertions, unsupported by any evidence from the appellant itself. She submitted that Mr Cock should not be permitted to give oral evidence on this issue since the appellant had not disclosed witness statements in advance of the hearing.

22. Mr Cock explained that he had advised the appellant on all aspects of its dispute with HMRC and had direct knowledge of the relevant background to the costs application. I decided that there was little prejudice to HMRC in permitting Mr Cock to give oral evidence as to why the application had been made late and I heard that evidence. I gave Miss Reeves the opportunity to cross-examine Mr Cock, but she declined to do so. Therefore, Mr Cock's evidence stood unchallenged, although Miss Reeves did submit that I should give it no weight on the basis that it was hearsay. I summarise my conclusions on Mr Cock's evidence at [37].

Contentions of the parties

23. Mr Cock requested the Tribunal to exercise its discretion under Rule 5(3) and/or Rule 7(2) of the Tribunal Rules to permit the appellant to make its application for costs out of time. He submitted that HMRC would have realised from the letter of complaint sent on 24 November 2014 that the appellant was seeking payment of its costs and would not be prejudiced if the application were admitted late. He also

submitted that HMRC had "acted unreasonably in bringing, defending or conducting" the substantive proceedings so that the threshold requirement for the award of costs in a "standard" case such as this was satisfied.

24. Miss Reeves submitted that the Tribunal should not exercise its discretion to permit a late application for costs. She pointed out that, in addition, the appellant was asking the Tribunal to waive the requirement set out in Rule 10(3)(b) of the Tribunal Rules that a schedule of costs be submitted with the original application (since Mr Cock had admitted that this had not been done) and submitted that the Tribunal should not exercise this discretion in the appellant's favour either. She also submitted that HMRC had not "acted unreasonably in bringing, defending or conducting" the substantive proceedings.

25. I have decided not to permit the appellant to make its application out of time, Therefore, the remainder of this decision deals only with that issue. However, as will be seen, I have taken into account the merits or otherwise of the appellant's claim for costs when making my decision and it is for that reason that I have included some consideration of the merits of the claim in the paragraphs that follow.

The law

26. There have been two recent, and conflicting, decisions of the Upper Tribunal dealing with the approach to be adopted to applications for extensions of time.

27. In *Revenue & Customs Commissioners v McCarthy & Stone (Developments) Limited* [2014] UKUT 196 (TCC), Judge Sinfield drew attention to changes to Rule 3.9 of the Civil Procedure Rules ("CPR 3.9") as applied in the courts and to what he saw as a "tougher and more robust" approach that the courts were adopting in considering applications for relief from sanctions for failure to comply with any rule, direction or order. He concluded at [47] that:

> As the Court of Appeal recognised in *Mitchell* ([2014] 1 WLR 795 at [49]), regard must still be had to all the circumstances of the case but the other circumstances should be given less weight than the two considerations which are specifically mentioned. In this case, applying the principles of the new CPR 3.9, as explained in *Mitchell* and *Durrant*, means that, in considering whether to grant relief from a sanction, I should take account of all the circumstances, including those listed in the old CPR 3.9, but I should give greater weight to the need for litigation to be conducted efficiently and the need to enforce compliance with the UT Rules, directions and orders.

28. By contrast, in the later case of *Leeds City Council v Revenue and Customs Commissioners* [2014] UKUT 350 (TCC), Judge Bishopp declined to follow the decision in *McCarthy & Stone*. Since the Tribunal has its own rules of procedure, and does not adopt the Civil Procedure Rules, he considered that the changes to CPR 3.9 and the tougher approach to which Judge Sinfield referred were not relevant to the way the Tribunal should approach applications for extensions of time. Therefore, Judge Bishopp's conclusion was:

> In my judgment therefore the proper course in this tribunal, until changes to the rules are made, is to follow the practice which has applied hitherto, as it was described by Morgan J in *Data Select*.

29. *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) is another authority of the Upper Tribunal on the approach to be taken to applications for extension of time in the Tribunal. At [34], of that judgment, Morgan J said:

> 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

30. At [38] he said:

> As I have indicated, the FTT in the present case adopted the approach of considering all the circumstances including the matters specifically mentioned in CPR 3.9. It was not said that there was any error of principle in that approach. In my judgment, the FTT adopted the correct approach.

31. The version of CPR 3.9 to which Morgan J was referring was different from the version applicable now (which is that same as that considered in *McCarthy & Stone*). I do not consider that Morgan J was indicating that the "old" version of CPR 3.9 should necessarily be preserved as an exhaustive guide to the approach the Tribunal should take in considering applications to extend time limits. Rather, I consider that Morgan J was simply concluding that, by considering all the circumstances including the matters specifically mentioned in the "old" version of CPR 3.9, the Tribunal would necessarily have been answering the five questions to which he referred at [34] of his judgment and therefore following the correct approach.

32. In deciding whether to follow *Leeds City Council* or *McCarthy & Stone*, I have applied the "general rule" to which Lord Denning referred in *Minister of Pensions v Higham* [1948] 1 All ER 863 namely that:

> … where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred if it is reached after full consideration of the earlier decision.

Since the *Leeds City Council* decision fully considered the decision in *McCarthy & Stone*, I have followed *Leeds City Council*. Accordingly, I have approached the application for an extension of time by considering the five questions to which Morgan J refers together with the overriding objective set out in Rule 2 of the Tribunal Rules.

Analysis of the "five questions" referred to in *Data Select*

The purpose of the time limit

33. I accept Miss Reeves's submissions that one of the purposes of the time limit contained in Rule 10(4) is to ensure that there is a date by which both parties to the dispute can assume that the litigation is at an end. However, I do not consider that the purpose of the rule can be explained solely by this consideration. It is also in the interests of justice generally that applications for costs should be made, with adequate supporting information, promptly after proceedings are concluded. Costs applications can involve a detailed examination of precisely what costs were incurred, and why, over a potentially lengthy period. In addition, where the proceedings in question have not been categorised as "Complex", it will be necessary to consider whether a party has acted unreasonably in bringing, defending or conducting those proceedings. The Tribunal's ability to address these issues will be enhanced if the application is made while the experience of the proceedings is still fresh in the minds of the parties and of the Tribunal itself.

The length of the delay

34. The Tribunal's letter to the parties informing them that HMRC had withdrawn from the proceedings was dated 28 October 2014. Therefore, the time limit set out in Rule 10(4)(b) of the Tribunal Rules expired on 25 November 2014. Although the appellant sent a letter of complaint to HMRC on 24 November 2014 which contained a request that HMRC pay the appellant's costs, it did not submit any application to the Tribunal until 10 March 2015. Therefore, the application to the Tribunal was made 104 days after the applicable time limit expired.

35. Moreover, as we have noted at [14], Mr Cock accepted that the application made on 10 March 2015 did not comply with the requirements of Rule 10(3)(b) of the Tribunal Rules. He attached an updated schedule of costs dated 29 June 2015 to a skeleton argument that he submitted just prior to the hearing. Miss Reeves submitted that even that amended schedule did not comply with Rule 10(3)(b). However, even if it did comply, the earliest date on which the appellant could be said to have submitted an application for costs in full compliance with Rule 10(3) and 10(4) of the Tribunal Rules was 206 days after the stipulated deadline.

Whether there is a good explanation for the delay

36. Mr Cock submitted that the reason why the appellant delayed in making its application to the Tribunal was that it hoped that HMRC would agree to pay the appellant's costs, as requested in the letter of complaint of 24 November. He confirmed that Counsel had not been consulted on the procedure for making an application for costs. In short he submitted that, at the time, the appellant was not aware of the need to make an application to the Tribunal for costs within 28 days.

37. As noted at [21], Miss Reeves objected to the admission of this evidence. I agree that it would have been better for an employee or director of the appellant to have prepared a witness statement setting out in detail the reasons for the delay.

However, Mr Cock stated that he was advising the appellant on its appeal and had first-hand knowledge of the circumstances leading up to both the making of the complaint to HMRC and the application to the Tribunal for costs. Therefore, I did not agree with Miss Reeves that Mr Cock was giving hearsay evidence and I accept his explanation of the reason for the delay.

38. However, I do not accept that this amounts to a "good explanation" for the delay for the following reasons:

(1) Mr Cock had accepted appointment as a duly authorised representative of the appellant for the purposes of proceedings before the Tribunal. While he would not necessarily need to be an expert on all aspects of the Tribunal Rules, he should have known that procedural rules existed and consulted them.

(2) Counsel had been instructed in relation to the appeal. The appellant and Mr Cock should have consulted Counsel on the procedure for making an application for costs.

(3) The Tribunal's letter of 28 October 2014 made it clear that there was a 28-day time limit in which the appellant could make "any further application with regards to this appeal". That should have put the appellant on notice that there was a time limit for making an application for costs.

(4) HMRC's letter of 11 February 2015, referred to at [13] above specifically mentioned the 28 day time limit and the need for the appellant to obtain the Tribunal's permission to make an out of time application for costs. However, the appellant did not make any application to the Tribunal until 10 March 2015 and Mr Cock gave no explanation at all for this element of the delay.

Consequences for the parties of refusing the appellant permission to make an out of time application for costs

39. Clearly, if the appellant is not permitted to make its application for costs it will not be able to advance its claim for costs. I have, therefore, briefly considered the strength of the appellant's claim in order to assess the magnitude of the prejudice it would suffer in this case. In considering the merits, I have borne in mind the comments of Moore-Bick LJ who said in *R (on the application of Dinjan Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633:

> In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that need to be considered…

40. However, I have also taken into account the comments of Judge Bishopp in *Leeds City Council* to the effect that procedure in the Tribunal is different from procedure in the courts and I have therefore considered the merits of the appellant's claim in a little more detail than it would be in the courts.

41. Since these proceedings have not been categorised as "Complex", the Tribunal has power to award costs only if it is satisfied that HMRC has acted "unreasonably in bringing, defending or conducting the proceedings". The appellant's case is that this threshold is met because:

(1) HMRC apparently based its decisions on BTIs that had been issued by other tax authorities within the EU ("Overseas BTIs") and at no point conducted its own assessment of the functionality of the products in question. Had it conducted its own assessment, it would have been clear that the classification that the appellant was proposing was correct.

(2) Despite basing its decisions on the Overseas BTIs, HMRC never provided the appellant with any translation of them.

(3) Dr Blakeway's expert evidence on behalf of the appellant was compelling. However, rather than recognising it as such, HMRC initially made an application to exclude Dr Blakeway's evidence while offering no competing expert evidence of its own.

(4) The appellant wrote to HMRC on two occasions to explain why HMRC's position was misconceived and requested HMRC to withdraw from the proceedings.

(5) HMRC had not referred to any new information or circumstance that caused it to withdraw from the appeal.

42. In *Tarafdar (t/a Shah Indian Cuisine) v Revenue and Customs Commissioners* [2014] UKUT 0362 (TCC), the Upper Tribunal said, at [34] :

> In our view, a tribunal faced with an application for costs on the basis of unreasonable conduct where a party has withdrawn from the appeal should pose itself the following questions:
>
> (1) What was the reason for the withdrawal of that party from the appeal?
>
> (2) Having regard to that reason, could that party have withdrawn at an earlier stage in the proceedings?
>
> (3) Was it unreasonable for that party not to have withdrawn at an earlier stage?

43. The appellant's arguments summarised at [41] essentially focus on the third stage of this test. In effect the appellant is arguing that it was unreasonable of HMRC not to have withdrawn from the proceedings earlier than they did and that they should either (i) never have contested the appeal at all, or (ii) should have withdrawn when the strength of the appellant's case was revealed either by Dr Blakeway's expert witness statement or following the appellant's letters of 13 May and 23 June 2014.

44. I do not consider that the appellant has shown a strong case that HMRC have behaved "unreasonably in bringing, defending or conducting proceedings" for the following reasons:

(1) If HMRC held a reasonable belief that the Overseas BTIs dealt with products similar to the Products, it would not necessarily be unreasonable for HMRC to require the appellant to prove that its proposed classification is correct and that the classification adopted by the other Member States was incorrect. The Combined Nomenclature which governs the classification of goods for customs duty purposes has effect throughout the EU and, therefore, it is not unreasonable to expect that the classification adopted in one Member State should be followed in the UK.

(2) The appellant did not present any evidence that suggested that it was unreasonable for HMRC to believe that the Overseas BTIs dealt with similar products to the Products.

(3) If the appellant considered that the Overseas BTIs were relevant to the appeal, it could have applied to the Tribunal for an order that they be disclosed. The fact that HMRC did not volunteer translations of these, or respond to informal requests for copies, is not necessarily unreasonable.

(4) It is not uncommon for exception to be taken to expert reports on the basis that the expert in question is straying beyond his or her expertise and expressing a view on matters of law. The appellant did not demonstrate that HMRC's objections to Dr Blakeway's report could not reasonably have been made.

(5) HMRC's letter of 1 August 2014 referred to at [6] suggests that HMRC considered that the dispute centred on a question of legal interpretation rather than the factual question on the use and function of the Products which was the subject of Dr Blakeway's report. The appellant produced no evidence to suggest that HMRC could not reasonably have held this view and indeed HMRC's challenges to Dr Blakeway's evidence appear consistent with it. Given HMRC's stated view as to the nature of the dispute, it is perhaps not surprising that HMRC did not consider Dr Blakeway's report to be as powerful as the appellant did.

(6) It is not uncommon for parties to litigation to express absolute confidence in their positions. Therefore, the fact that HMRC did not withdraw from proceedings when invited to do so is not of itself unreasonable.

Consequences for the parties of granting the appellant permission to make an out of time application for costs

45. If I grant permission to make an out of time application, then, if they are not content to pay the appellant's costs, HMRC will need to defend the application in circumstances where they could legitimately consider the dispute with the appellant to be at an end. However, I accept Mr Cock's submissions that the prejudice HMRC would suffer is relatively low. They would have been aware following the appellant's letter of 24 November 2014 that the appellant might seek to recover costs. Miss Reeves did not suggest that the delay in making the application for costs had prejudiced HMRC's ability to defend it. In fact, her able advocacy demonstrated quite the contrary.

Discussion and conclusion

46. As noted at [33], the purpose of the time limit is to ensure that applications for costs are made speedily while the memory of relevant aspects of the proceedings is fresh in the mind of both the parties and the Tribunal. The appellant is on any view 3½ months late with its application and could fairly be said to be nearly 7 months late given Mr Cock's acknowledgement that the application submitted on 10 March 2015 did not comply with the Tribunal Rules. A delay of even 3½ months is not insignificant or trivial. For reasons set out at [38], I am not satisfied that there is a good explanation for the delay. Without more, these considerations would lead me to the conclusion that the appellant's application should be refused.

47. I have weighed up the prejudice that the appellant would suffer in being denied the opportunity to make an application for costs against the prejudice HMRC would suffer if I permitted the application. I consider this to be finely balanced. I do not consider the appellant's case to be strong, so I consider it suffers relatively little prejudice in not being permitted to make its application. However, equally, I have concluded at [45] that HMRC would suffer relatively little prejudice if the late application were admitted. Since I have concluded that the prejudice that the parties would suffer in each case is finely balanced, considerations of prejudice do not outweigh the considerations set out at [46]. Similarly, I can see no reason why the overriding objective set out in the Tribunal Rules outweighs those considerations.

48. The appellant's application is accordingly dismissed.

49. 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.

JONATHAN RICHARDS
TRIBUNAL JUDGE

RELEASE DATE: 27 JULY 2015