



TC05199

Appeal number: TC/2015/03878

VAT - application for permission to appeal out of time – whether there had been a good reason for the delay – no – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANDREW BUDGEN

Appellant

- and -

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

TRIBUNAL: JUDGE ALEKSANDER

Sitting in public at Fox Court, London on 6 may 2016

The Appellant did not attend and was not represented

**Ben Lloyd, counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. There were two applications before the Tribunal. The first was an application
5 by the Appellant, Mr Budgen, for leave to bring his appeal out of time. The second
was an application by HMRC for the appeal to be struck out in the event that I granted
leave for the late appeal.

Procedure

2. At the time the hearing was listed to commence, Mr Budgen was not present
10 and was not represented. Mr Budgen was telephoned by the clerk, and Mr Budgen
told the clerk that he was unaware that the hearing was due to take place, and asked
that the hearing be deferred so that he could attend.

3. I decided nonetheless that the hearing should proceed for the following reasons.
The hearing had originally been listed for 16 December 2015, but Mr Budgen wrote
15 to the Tribunal Centre stating that he was in Australia until 1 May 2016. The hearing
was therefore re-listed for 6 May 2016 and the Tribunal Centre wrote to Mr Budgen
notifying him of the new date. A copy of that letter to Mr Budgen is on the Tribunal's
case file. In addition Mr Fyle, who was attending the hearing from HMRC's
Solicitor's Office, told me that he had been in contact with Mr Budgen by e-mail prior
20 to the hearing date in order to agree and prepare the hearing bundles.

4. I was therefore satisfied that Mr Budgen had been notified of the hearing.
Given the length of time that had elapsed since the subject matter of the appeal, and
the fact that the hearing had been previously postponed to accommodate Mr Budgen's
trip to Australia, I was satisfied that it was in the interests of justice to proceed with
25 the hearing, notwithstanding Mr Budgen's absence.

5. I first heard HMRC's submissions relating to Mr Budgen's application for leave
to appeal out of time. I decided to reserve my decision.

6. I then heard HMRC's submissions in relation to their application to strike out,
so that I could address this application in the event that I decided to give Mr Budgen
30 leave to bring his appeal. At the conclusion of HMRC's submissions relating to the
strike out application, I gave a direction for HMRC to send to the Tribunal Centre by
13 May copies of relevant provisions of the legislation which had been referenced in
the course of HMRC's submissions relating to the strike out application, but which
had not been included in the hearing bundle. In the event, HMRC provided by e-
35 mails not only copies of the legislation, but also additional case law authorities, copies
of correspondence between HMRC and Mr Budgen that had not been included in the
hearing bundle, and some further brief written submissions. HMRC's e-mails were
copied to Mr Budgen, and he responded to the Tribunal, repeating that he had not
been aware of the hearing date, and requesting that the hearing be re-listed in June or
40 July 2016.

7. I am conscious that the material submitted by HMRC went beyond the scope of
my directions, and that Mr Budgen had little opportunity to respond. But in the end,

for the reasons which will become apparent, in reaching my decision I did not need to refer (and did not refer) to any of the material sent to me by HMRC or by Mr Budgen.

Application for leave to appeal out of time

Background Facts

5 8. This appeal relates to C18 Post Clearance Demand Notes for underpaid VAT in the sum of £2,388.48 that were issued on 28 and 29 April 2008.

9. The VAT arose in respect of two consignments of sails and masts that were imported into the UK under a temporary VAT number. They were due to be exported to Australia on 8 October 2008, and Mr Budgen claimed inward processing relief under the EU Customs Code (Council Regulation 2913/92) and the Implementing Regulations (Commission Regulation 2454/93).
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10. As no customs export entries had been submitted to evidence the fact that the goods had left the UK, C18 Post Clearance Demand Notes were issued on 28 and 29 April 2008. Mr Budgen was informed that if he disagreed with the decision, he could have the decision reviewed. No request for a review was made by Mr Budgen.
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11. On 19 September 2013, Mr Budgen e-mailed HMRC stating that he had received an invoice (I assume he is referring to the C18 Post Clearance Demand Notes for the VAT), and that the sails had been exported and it would now be difficult to find the paperwork. HMRC replied saying that they were unable to trace any previous paperwork, and he was advised that he needed to send HMRC the customs export entries for the goods. There was then further correspondence between Mr Budgen and HMRC in March 2015. Mr Budgen filed his appeal with the Tribunal on 15 April 2015. This was returned to him as he had not enclosed the HMRC decision against which he was appealing. The appeal was finally lodged with the Tribunal on 6 July 2015.
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The Law

12. In the absence of a review, the VAT Act 1994 requires an appeal to be made to the Tribunal before the end of 30 days of the date of the document notifying the relevant decision to the taxpayer. The deadline for the appeal in this case would therefore be by the end of May 2008.
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13. The Tribunal has discretion to extend this time limit. The courts have examined how tribunals should exercise their discretion in a number of cases which bind this Tribunal. The most recent decision is that of the Court of Appeal in *BPP Holdings v HMRC* [2016] EWCA Civ 121. That decision related to a direction given by the Tax Chamber to debar HMRC from further participation in proceedings for their serious and prolonged breach of an order requiring them to provide proper particulars of their pleaded case. In a unanimous decision delivered by the Senior President of Tribunals, the Court of Appeal held that parties to an appeal are required to comply with a tribunal's directions, unless there is a good reason to the contrary.
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14. However, I note that *BPP Holdings* is a decision relating to sanctions for non-compliance with directions, particularly in circumstances where there was a history of non-compliance. It does not address an application for an extension of time where there had been no such history. Those circumstances were considered by the Upper Tribunal in *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC), which discusses the relevant considerations for allowing an extension of time. At paragraph 34 Mr Justice Morgan says:

10 As a general rule, when a court or tribunal is asked to extend a relevant time limit, it 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 for 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.

15 *Discussion*

15. Generally the purpose of adherence to time limits in the legislation is to bring finality and certainty, which is necessary for HMRC to operate the taxation system efficiently. Time limits are also necessary for the efficient organisation of the Tribunal appeals system. Generally, an extension of time is the exception rather than the rule.

16. The notice of appeal was received by the Tribunal Service on 6 July 2015; the delay beyond the thirty day time limit exceeds 7 years.

17. The Appellant's explanation for the delay is contained in his correspondence with HMRC and the Tribunal, and in his notice of Appeal. He states that the C18 Post Clearance Demand Notes and other HMRC correspondence were sent to the wrong address. But in the correspondence, Mr Budgen acknowledges that this correspondence was forwarded to him by his neighbour some time in 2010. Certainly Mr Budgen must have been aware of the C18 Post Clearance Demand Notes by 19 September 2013, when he e-mailed HMRC about them - this is the only record HMRC have of any correspondence from Mr Budgen during the five year period from 2010 to 2015. Mr Budgen has given no explanation for the delay between 2010 and September 2013, nor for the delay from September 2013 to March 2015.

18. The consequences of allowing an extension of time (or conversely refusing an extension) are obvious. I have not considered, in the event that an extension of time were to be granted, whether Mr Budgen would have any prospects of success in his substantive appeal.

19. Taking all these factors into account, this is not in my view a case in which in the interests of justice I should exercise the Tribunal's discretion to permit the appeal to be made after the expiry of the normal time limit.

20. The application for permission to appeal out of time is therefore refused.

Application to strike out

21. As I have refused permission to appeal, the application to strike out does not need to be considered.

22. 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.

NICHOLAS ALEKSANDER

TRIBUNAL JUDGE

RELEASE DATE: 23 JUNE 2016