



TC05927

Appeal number: TC/2016/7172

PROCEDURE – application for further and better particulars of grounds of appeal – whether instead the Tribunal should order HMRC to produce a statement of case on the basis that the decision letter under appeal was unparticularised – no – application allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

UNICORN SHIPPING LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE BARBARA MOSEDALE

**Sitting in public at the Royal Courts of Justice, the Strand, London on 22 May
2017**

Mr O Conolly, Counsel, for the Appellant

**Mr J Carey, Counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. The appellant applied to use the Simplified Declaration Procedure (SDP) for
5 customs duty. HMRC refused that application on 9 November 2016. The appellant
appealed that decision on 6 December 2016.

2. On 7 January 2017 HMRC were directed to deliver their statement of case
within 60 days. On 3 March 2017, some 4 days before it was due, HMRC applied for
10 further and better particulars of the appellant's grounds of appeal. The appellant
objected to the application.

The parties' positions

3. HMRC's case was that there should be no reversal of the normal procedure
which requires the appellant states its grounds of appeal before HMRC provides its
statement of case; and as the appellant has not really explained its grounds of appeal it
15 should provide further and better particulars before HMRC was ordered to deliver its
statement of case.

4. The appellant's case was that it did not understand the reasons given in
HMRC's decision letter for the refusal to permit it to use the SDP. It says that HMRC
should therefore provide its statement of case, and that would put the appellant in a
20 position to provide its full grounds of appeal.

Decision

5. It is the appellant's appeal. To lodge an appeal, an appellant must have grounds
of appeal and moreover, it must have grounds of appeal which on their face are
arguable. This is so because litigation should not be by ambush: the defendant must
25 know what is alleged against it. Moreover, the defendant needs to be in a position to
judge whether the appeal has any real prospects, so that if it does not, the defendant
can apply to have it struck out without incurring the costs of a full appeal hearing.

6. Therefore, it follows that grounds of appeal must be sufficiently detailed to
enable the defendant to understand the case and prepare a statement of case in answer
30 to it. This is required by authority in any event, such as *British Airways Pension
Trustees Ltd v Sir Robert MacAlpine and Sons Ltd* (1994) 72 BLR 26 at [33-34].

7. The appellant's submission here that it does not need to provide its full grounds
of appeal where (it says) it does not understand HMRC's decision letter should be
rejected: the appellant should only lodge an appeal where it has grounds of appeal
35 that give rise to an arguable case that that decision was wrong. And to the extent that
HMRC's decision letter does not contain adequate or perhaps, any, reasons for the
refusal to authorise the appellant for the SDP, then that in itself I would expect to see
as a ground of appeal.

8. But any failure by HMRC to fully or clearly explain their decision does not justify a departure from the rule that the appellant must put forward their full grounds of appeal in respect of that decision.

5 9. It may be that HMRC's statement of case in response to proper grounds of appeal provide an explanation to the appellant for the decision which was not apparent to it from the actual decision letter itself: if that happens the appellant could apply to amend its grounds of appeal and/or to strike out those parts of the statement of case which do not appear to reflect the decision. But that does not obviate the need for the appellant in the first instance to state its grounds of appeal in sufficient
10 detail for HMRC to understand its case.

10. In this case, I considered that the grounds of appeal were inadequate on their face as:

15 (a) they contained nothing more than a general denial and a statement that the appellant would 'respond in more detail once it knows exactly what occasions/incidents are relied upon' by HMRC. That was inadequate as it entirely failed to address the details which HMRC did give in circumstances where the appellant had the burden of proof. For example, HMRC listed a large number of visits to the appellant's premises at which (HMRC alleged) the appellant refused them entry. There was no
20 particularised response to this.

(b) The grounds of appeal contained a statement that the decision letter provided no coherent reasons in fact or law for the denial, but the grounds entirely failed to explain what the appellant meant by that;

25 (c) The appellant indicated that it considered the Tribunal's jurisdiction was appellate whereas it was clear that the appellant now accepted it was supervisory.

30 (d) Moreover, it was clear from listening to Mr Conelly that the appellant did intend to challenge the decision on a number of grounds which it had not explained in its notice of appeal, such as (1) its case that HMRC acted unreasonably because they had (allegedly) agreed to permit the appellant to use the SDP but then resiled on this because the appellant would only communicate with HMRC through its solicitors; (2) HMRC (allegedly) took into account irrelevant matters in reaching its decision such as an (allegedly) unfounded belief the appellant has connections to
35 MTIC fraud; (3) HMRC were (allegedly) very slow in dealing with the application (allegedly) in breach of EU law.

40 11. My decision was that the appellant should be ordered to provide further and better particulars of its grounds of appeal, before HMRC would be ordered to provide its statement of case. It could only appeal the decision communicated to it: where that decision lacked detail, the grounds of appeal might consequently be brief too. But they needed to be given.

12. If I had acceded to the appellant's request for a statement of case before they were required to particularise its grounds of appeal, I would in effect be ordering HMRC to re-issue their decision letter and giving HMRC the opportunity to rectify any deficiencies in that letter. On the contrary, it is the letter of November 2016 which is the subject of the appeal. Any inadequacies in that letter should be the subject of the appellant's appeal, and should be stated in its grounds of appeal.

13. The appellant complained that this interim hearing further delayed progress of its appeal and its pursuit of its application for SDP: but the cause of that seems to me to be its own failure to provide properly articulated grounds of appeal and instead to pursue a reversal of the normal procedure in litigation.

14. I note that the appellant sought not only HMRC's statement of case to be delivered before the full particulars of its grounds of appeal, but applied for the Tribunal to direct HMRC's statement of case with an automatic 'unless' order, on the basis that HMRC's application for further and better particulars was made only shortly before the due date for delivery of their statement of case. While I agree with the appellant that this dilatoriness on HMRC's part in making its application is regrettable, an automatic unless order is not indicated, as the application for further and better particulars, while late, was justified. And the appellant, as I have said, had the remedy in its own hands in that it could have delivered the further and better particulars when they were requested rather than refusing to do so, thus necessitating this hearing. Nevertheless, HMRC should ensure it makes its applications more promptly and a second failure to do so in this litigation may lead to an unless order.

15. Directions to progress this appeal to hearing were given at the hearing and are contained in a separate order.

16. 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.

Barbara Mosedale
TRIBUNAL JUDGE

RELEASE DATE: 5 June 2017