



TC04711

Appeal number: TC/2014/5919

*VAT – procedure - application for admission of appeal submitted late –
s 83G VATA 1994*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr MOHAMMAD JAVID

Appellant

- and -

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

**TRIBUNAL: Judge Peter Kempster
 Mr Andrew Perrin FCA**

Sitting in public at Centre City Tower, Birmingham on 27 October 2015

Mr Imtiaz Ilahi (Midland Accountants Limited) for the Appellant

Ms Harry Jones (HMRC Appeals Unit) for the Respondents

DECISION

1. On 29 October 2014 the Appellant (“Mr Javid”) filed a notice of appeal against a VAT assessment issued by the Respondents (“HMRC”) on 17 August 2011 (“the Disputed Assessment”).

2. The Disputed Assessment charges output VAT of £26,806 in respect of the VAT period 05/11. At the hearing the parties confirmed to the Tribunal that although Mr Javid does not challenge the assessed output tax, the real dispute relates to HMRC’s refusal to grant credit for certain input tax that Mr Javid has either claimed or intends to formally claim in relation to the same period.

3. The appeal being late, Mr Javid requires the permission of the Tribunal to proceed: s 83G(6) VATA 1994 states, “An appeal may be made after the end of the period specified ... if the tribunal gives permission to do so.”

Background

4. At the relevant time Mr Javid carried on business as a sole trader under the name Trade System Co. In June 2011 HMRC conducted a VAT visit and were not satisfied that the documents produced to support certain input tax credits met the formal requirements for valid VAT invoices (reg 29 VAT Regulations 1995 refers). HMRC’s understanding (which Mr Javid may dispute) was that Mr Javid and another individual purchased iPhones and iPads for a customer (a company); he did this using cash, gift cards and his personal debit/credit cards; he had two part time employees who purchased phones for him using cash and gift cards.

5. The Disputed Assessment was issued on 17 August 2011.

6. In 2012 Mr Javid changed advisers to Midland Accountants Limited and on 25 October 2012 Mr Ilahi wrote to HMRC summarising his understanding of the tax dispute and stated, “I should be grateful if the assessment for £26,806 issued in July 2011 can be vacated ...”.

7. On 2 November 2012 HMRC replied to Mr Ilahi setting out the background to the Disputed Assessment and stating “... I do not intend to revisit my assessment at the present time unless further evidence is produced.” Also, “I hope this explains why the assessment was raised in the first place. Please also note that you are out of time for lodging an appeal and if an appeal is made then HMRC will oppose it as being out of time, this does not mean the Tribunal will not allow the appeal to be lodged.”

8. In June 2013 (the letter is misdated) Mr Ilahi wrote to HMRC enclosing various bank and credit card statements, and again asked for the Disputed Assessment to be vacated. On 11 June 2013 HMRC replied stating:

5 “I am not at the present time willing to revisit my Assessment ... You are also out of time regarding requesting a review of this matter ... If you feel my Assessment is not correct then you have the right to Appeal this matter. However I must point out that you are out of time and will therefore need to make an application to the Tribunal to have this matter heard out of time. I must make you aware that HMRC will oppose this but it is for the Tribunal to decide whether an appeal can be lodged.”

9. On 1 July 2013 HMRC again wrote stating:

10 “You still have the right to Appeal this matter, however I must point out that you are out of time and will therefore need to make an application to the Tribunal to have this matter heard out of time. I must make you aware that HMRC will oppose this but it is for the Tribunal to decide whether an appeal can be lodged.”

15 10. On 23 August 2013 Mr Javid lodged a notice of appeal with the Tribunal but this was rejected as being incomplete. The rejected notice was returned to Mr Javid but not copied to his advisers (because formal authority had not been provided).

11. On 29 October 2014 a further notice of appeal was lodged with the Tribunal.

Appellant’s case

20 12. For Mr Javid, Mr Ilahi submitted as follows.

13. Mr Ilahi’s firm had been instructed in 2012. In October 2012 he had attempted to resolve matters with HMRC. HMRC had stated there were two reasons why the input tax was refused: the first a reference to gift cards, and the second an undisclosed reason. He had obtained bank and credit card statements to support the claims, which
25 had taken some time. HMRC’s response had been confusing; they had invited additional information but without setting any deadline. Mr Ilahi’s view was that HMRC were still open to discussions and a formal appeal to the Tribunal was not required until those discussions had been exhausted.

14. Mr Ilahi had been unaware that the August 2013 appeal to the Tribunal had
30 been rejected as he had not been copied on the correspondence between the Tribunal and Mr Javid. He only became aware when HMRC’s debt collection proceedings against Mr Javid had continued. A further appeal was filed when he became aware.

15. HMRC had not disclosed the second of their two reasons for refusing the input tax; that was unfair as it prevented Mr Javid from explaining his position. HMRC had
35 not brought to Mr Javid’s attention their statement of practice “VAT Strategy: Input Tax deduction without a valid VAT invoice”, which expressly stated that alternative evidence might be accepted by HMRC in the absence of formal VAT invoices; that was unfair because it denied Mr Javid the opportunity to adduce alternative evidence of the supplies. HMRC had admitted in correspondence that if information had been
40 submitted promptly then it would have been considered but because of delays it had been refused; that was unfair and disproportionate.

16. The Tribunal authorities quoted by HMRC (*Gold Standard Telecom Limited* [2014] UKFTT 577 (TC) and *Xpress Telecom Limited* [2014] UKFTT 1003 (TC)) were not relevant because Mr Javid was a sole trader whereas those cases concerned companies with employees. However, they did indicate that HMRC were aware that Apple Stores would not provide formal VAT invoices, so the inspector dealing with Mr Javid should have known that fact.

17. Much of the background papers included in the hearing bundle by HMRC was irrelevant to the matter of permission for a late appeal and had been put before the Tribunal to deflect attention from HMRC's conduct and to prejudice consideration of Mr Javid's application.

Respondents' case

18. For HMRC Ms Jones submitted as follows.

19. The appeal was unjustifiably late. No good reason had been advanced why the appeal was not made in time. The Disputed Assessment included the standard wording informing the taxpayer of his appeal rights. The taxpayer's attention had been drawn on several occasions to the need to apply to the Tribunal for permission to pursue a late appeal but this had apparently been ignored. When an appeal was eventually lodged in August 2013, it had been rejected by the Tribunal; there was then an unexplained delay of over one year before a correct notice was filed.

20. There was little to be gained by re-opening the 05/11 VAT period. HMRC had given credit for other input tax incurred which, on reflection, should have been challenged; although that would not be re-examined, the taxpayer had done quite well out of the situation. The facts in *Gold Standard Telecom* and *Xpress Telecom* were similar to Mr Javid's case and pointed to there being little likelihood of success even if the appeal was admitted late. First, there appeared to have been more than one person purchasing the goods, which raised the point about undisclosed agents that featured in those cases. Secondly, HMRC's analysis of time and place of purchase raised concerns over the bona fides of some of the invoices presented to HMRC; it was accepted that Mr Javid had not had an opportunity to consider fully that analysis.

21. HMRC did not accept Mr Ilahi's comments about their conduct but in any event any procedural points were unlikely to result in the Disputed Assessment being overturned: *GB Housley Limited* [2015] UKUT 71 (TCC).

Consideration and Conclusions

22. Section 83G(6) VATA 1994 provides, "An appeal may be made after the end of the period specified ... if the tribunal gives permission to do so." We consider that the correct approach is to follow the Upper Tribunal decision in *Leeds City Council v HMRC* [2015] STC 168 (at [19]) and apply the practice described by Morgan J in *Data Select Ltd v HMRC* [2012] STC 2195 (at [37]): "the approach of considering the overriding objective and all the circumstances of the case, including the matters

listed in CPR r 3.9, is the correct approach to adopt in relation to an application to extend time pursuant to s 83G(6) of VATA.”

23. As we stated at the hearing, we have not attached any weight to the analysis schedules prepared by HMRC and included in the hearing bundle because (a) Mr Javid and his advisers have not had adequate opportunity to consider those documents, and (b) we are concerned now only with whether the appeal should be admitted late. We accept that they were included in the bundle to ensure that all the background papers were disclosed to the other party and the Tribunal.

24. In terms of the prejudice to the respective parties of granting or refusing the application, we accept that the amount in dispute is not inconsiderable for a sole trader; also that (as HMRC made clear in their correspondence with Mr Javid’s advisers) HMRC were entitled to consider the dispute closed when no appeal was made to the Tribunal, even after repeated reminders.

25. The main matter for us to consider is the reason why the appeal was made so late. We have looked at three periods.

(1) First, the period from the expiry of the 30 day appeal deadline (mid-September 2011) to the involvement of the new advisers one year later.

(2) Secondly, the period from October 2012 to the filing of the first notice of appeal in August 2013.

(3) Lastly, the period from August 2013 to the filing of the correct notice in October 2014.

26. In relation to the first period of delay, no explanation has been provided why Mr Javid and his previous advisers did not make a timeous appeal against the Disputed Assessment. The appeal rights were notified on the Disputed Assessment and would also have been contained in the standard issue notes that accompany VAT assessments. We note that HMRC stated (letter dated 26 July 2011) that they were issuing the Disputed Assessment in the absence of provision of information previously requested. We also note that HMRC did draw Mr Javid’s attention to the possibility of alternative evidence being acceptable in the absence of valid VAT invoices (letter dated 28 May 2012). It appears that there was simply no action by Mr Javid or his then advisers to resolve the position, nor to make an appeal to the Tribunal.

27. In relation to the second period of delay, HMRC repeatedly made clear that they were not prepared to revisit the Disputed Assessments and, again repeatedly, reminded Mr Javid’s new advisers of the need to make a late application to the Tribunal. Mr Ilahi’s explanation is that as HMRC appeared open to receiving further information then he considered no appeal was necessary unless and until those further discussions were exhausted. We do not consider that explanation is reasonable. It is true that with the appointment of new advisers who engaged with the process HMRC indicated they were prepared to look at further information; however, HMRC were clear (letter dated 2 November 2012) that a late appeal was still necessary, and when nothing arrived until six months later HMRC had reasonably assumed matters were

closed (letter dated 11 June 2013) and again stated that a late appeal was necessary. HMRC's repeated advice (which was correct) was simply ignored.

28. In relation to the third period of delay, Mr Javid should have informed his advisers that the notice of appeal had been returned by the Tribunal. However, we are prepared to accept that he may have assumed that his advisers were already aware of this, and the advisers do appear to have acted promptly to file a further notice once they became aware that the first had been rejected.

29. Our conclusion is that for both the first and second periods of delay there is no acceptable reason why an in-time appeal was not made nor why a late appeal application was not filed until almost two years after the statutory deadline. We do not consider it would be just and fair to admit the late appeal in those circumstances.

Decision

30. As communicated to the parties at the conclusion of the hearing, the application for permission to make a late appeal is REFUSED.

31. 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.

Peter Kempster
TRIBUNAL JUDGE

RELEASE DATE: 5 NOVEMBER 2015