[2018] UKFTT 672 (TC)

TC06820

Appeal number: TC/2017/07866

PROCEDURE – strike out application – whether reasonable prospect of success – wrong decision appealed – strike out granted

FIRST-TIER TRIBUNAL
TAX CHAMBER

ATAF IQBAL BUTT **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE FAIRPO

Sitting in public at Manchester on 24 September 2018

The appellant appeared in person
Mr Hilton, presenting officer for HMRC

Introduction

1. This is an application by HMRC to strike out the substantive appeal under Rule 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (The "Tribunal Rules") on the basis that the appeal had no reasonable grounds of success.

2. HMRC noted that no outline of arguments had been received from the appellant, contrary to the Tribunal directions in this matter of 23 June 2018, which had required the parties to exchange such outline no later than seven days before the hearing. The appellant stated that he has not put together such an outline. The hearing proceeded, notwithstanding the appellant's failure to provide such outline.

Background

3. The substantive appeal is against a decision by HMRC dated 8 October 2009 to deny VAT repayment claims by a business, Spectrum Knitting, for the VAT periods 08/2007 and 11/2007. The appellant in this appeal was one of the partners in Spectrum Knitting.

4. Spectrum Knitting had claimed the repayments on the basis that transactions had been cancelled and goods returned by the customers. HMRC enquired into the repayment claims and denied the repayments on the basis that insufficient supporting documentation had been provided to support the claims.

5. Spectrum Knitting appealed against the denial of the repayment claims to the VAT and Duties Tribunal on 20 January 2009. That appeal was given reference number MAN/2009/0082. Spectrum Knitting did not appear at a case management hearing on 1 August 2011 and an unless order was issued requiring them to notify the Tribunal by 31 August 2011 that they intended to proceed with the appeal. No notification was received and the parties were notified that the appeal was struck out on 23 September 2011.

HMRC's case

6. HMRC submitted that:

(1) this decision has already been brought before the tribunal and it would be an abuse of process to allow the matter to be litigated a second time. The appellant had had numerous opportunities in the course of the first litigation to pursue the matter: the appeal was brought in 2009 but was not struck out until 2011, with a clear warning having been given in August 2011 as to the striking out;

(2) no explanation has been given as to why the present appellant did nothing to pursue the original appeal;

(3) no explanation has been given as to why the present appellant has chosen to wait six years to lodge this appeal.

(4) HMRC are entitled to consider that this matter is final and given the passage of time it is likely that records may have been withdrawn and relevant

personnel left. There would be the potential for substantial prejudice to HMRC's ability to deal with the matter if the appeal was allowed to proceed.

(5) It would not be in the public interest for HMRC to incur the cost of litigating a matter long since considered final.

(6) It is clear from the case of *Gore Wood* [2201] 1 All ER 481 that special circumstances are required to be able to re-litigate a matter. In this case there were no special circumstances: the appellant's argument that he has had a broken leg and cannot work cannot amount to special circumstances.

(7) The case of *Badaloo* [2017] UKUT 0158 (TCC) at §34 noted that "an abuse of process ground is … to be treated as a sub-set of the power of the Tribunal to strike out all or part of the proceedings where there is no reasonable prospect of success". HMRC submitted that re-litigating the entire appeal should be regarded as an abuse of process and so the Tribunal has power to strike out this appeal under Rule 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273) ("the Tribunal Rules").

(8) The appellant's case had no realistic prospect of success in any case: the appellant's grounds of appeal were that he wanted to be able to demonstrate that goods dispatched to EU customers should be regarded as zero-rated. This had nothing to do with the denial of the repayment claim in the original decision and so the appellant could not be regarded as having an arguable case and so no reasonable prospect of success.

(9) HMRC noted that the appellant had also argued that the original appeal was struck out as a result of a lack of urgency on the part of his advisers, and that he should be allowed to make his arguments and have his case heard. However, no argument had been put forward either in the original appeal or in this appeal as to why HMRC's decision to deny the repayment claim was flawed. Further, although the appellant contends that the original appeal was struck out through no fault of his own, HMRC considered that it was still the appellant's responsibility to ensure that he knew about the appeal and that it was conducted properly, as it was an appeal that he was bringing as a partner.

(10) The appellant had also stated that HMRC had suggested that he had a right or opportunity to appeal. There is nothing in HMRCs records to show that he was so advised.

(11) HMRC had not corresponded with the appellant, as he contends, because there was no reason for correspondence as the previous appeal had been finalised when it was struck out.

(12) HMRC had sympathy for the appellant with regard to the bankruptcy but noted, again, that no arguments as to why the repayment claims should have been allowed had been put forward.

Appellant's case

7. The appellant submitted as follows:

(1) He has not had an opportunity to put his case. The original appeal was struck out due to a lack of urgency on the part of his erstwhile advisers. He had now pieced together a timeline of events and wanted to present his appeal. In particular, he wanted to be able to demonstrate that the business was entitled to

zero-rate dispatches of goods to EU customers. He contended that the removals were legitimate and wanted to demonstrate this.

(2) He knew nothing about the denial of the repayment claim by HMRC in October 2009. HMRC had not corresponded with him.

(3) He has recently broken his leg and is financially constrained.

(4) HMRC took ten years to correspond and he considered that the cost of litigation would be relatively small and all litigation was, in any case, at public expense. HMRC had initiated bankruptcy proceedings against him and so the cost should be balanced against the cost of continuing with the bankruptcy and the public cost of rehousing him after bankruptcy.

(5) He believed that HMRC did not have a strong case and that this is why they are seeking the strike out.

Discussion

8. The decision appealed is a denial of repayment claims.

9. The appellant's grounds of appeal put forward in the appeal documentation and repeated in the hearing were that the appellant wanted the opportunity to demonstrate that goods supplied to EU customers were properly zero-rated, to provide a timeline of events, and that he had found some paperwork which would assist. HMRC were bringing bankruptcy proceedings against him in respect of the VAT assessed on those supplies of goods because they did not accept that the supply should be zero-rated.

10. As the appellant's grounds of appeal (that supplies were properly zero-rated) bore no relation to the decision appealed (denial of repayment claims), the Tribunal asked the appellant to explain that difference.

11. The appellant replied that, after the appeal relating to the denial of the repayment claims, HMRC had disallowed the business' treatment of zero-rating on other goods and it was this disallowance of zero-rating which he wanted the opportunity to challenge as it meant that he was facing bankruptcy because HMRC had assessed him to VAT in relation to those supplies.

12. The appellant did not dispute the denial of the repayment claims and agreed that he was not challenging the decision to deny those repayment claims.

13. In the circumstances, it was unnecessary to consider HMRC's submissions as to abuse of process as the appellant agreed that he was not seeking to re-litigate the decision which had been appealed in 2009 and struck out in 2011.

14. The Tribunal Rules require (Rules 20(2)(d)) that a person making or notifying an appeal to the Tribunal must provide details of the decision appealed against. It is not enough to provide details of any decision by HMRC; it is the details of specific decision being appealed which must be provided. The appellant has not provided those details.

15. I considered whether there was any scope for amending the appeal and, although Rule 5 of the Tribunal Rules provides the Tribunal with extensive case management powers including the power to permit or require a party to amend a document, I concluded that these powers did not extend to allowing the appellant to

completely change the details of the decision which was the subject matter of the appeal. In order to challenge the decision in respect of zero-rating, the appellant would need to submit a fresh appeal with the correct decision being appealed and would again need to make an application to bring the appeal out of time.

Conclusion

16. As the appellant put forward no case with any reasonable prospect of success in relation to the decision relating to denial of repayment claims and agreed that the decision being appealed was not the decision which he wanted to appeal, the strike out application is therefore GRANTED and the appeal is STRUCK OUT.

17. 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.

ANNE FAIRPO
TRIBUNAL JUDGE

RELEASE DATE: 14 November 2018