



**TC06946**

**Appeal number: TC/2018/04847**

***PROCEDURE - Excise duty assessment - Notice of Assessment - Identity of addressee - Application of s 114 Taxes Management Act 1970 - Application to make a late appeal - Martland considered and applied - Application dismissed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR MICHAEL COYLE trading as  
'COYLE TRANSPORT'**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE CHRISTOPHER MCNALL**

**Sitting in public at Tribunal Hearing Centre, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF on 14 January 2019**

**Mr Neil Manley, of McNamee McDonnell Solicitors, Newry, for the Appellant**

**Ms Charlotte Brown, of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This is my decision in relation to an application to make a late appeal set out in a Notice of Appeal dated 10 July 2018.

5 2. The Notice of Appeal gives the Appellant's details as follows:

"Title or company or organisation: Coyle Transport.

First Name (if individual): Michael.

10 Surname (if individual): Coyle.

Address: 7 Dernalebe Road [etc]"

15 3. The Notice of Appeal is not signed by Mr Coyle, but is signed by a solicitor on his behalf.

4. The Notice of Appeal seeks to challenge a decision made on 3 September 2013, whereby HMRC assessed the sum of £29,140, by virtue of Regulation 10 of the *Excise Goods (Holding, Movement and Duty Point) Regulations 2010*. On that same date, HMRC, pursuant to section 12(1A) of the *Finance Act 1993*, and imposed a penalty of  
20 £5,828 in accordance with Schedule 41 of the *Finance Act 2008*.

5. The assessment and penalty both arise from the seizure on 12 December 2012 by HMRC's Officer McGuinness of a lorry PHZ6538 and a load of beer.

6. The Officer's Assessment/Civil Penalty Excise (Form EX601) and the letter of 3 September 2013 are both addressed to: "Coyle Transport, 7 Dernalebe Road ... " An  
25 Assessment and Penalty Explanation dated 2 August 2013 were similarly addressed.

7. The Notice of Appeal refers only to the sum of £29,140, which was the sum assessed in relation to excise duty. The Notice of Appeal makes no reference to the penalty sum of £5,828 and says that there is no appeal against any penalty or surcharge.

30 8. The Grounds of Appeal give the following reason why the appeal was made or notified late:

"This assessment was brought in relation to vehicle PHZ6358, which is owned by the Appellant's father. This assessment was addressed to Coyle Transport which belongs to the Appellant's father. It was only when HMRC contacted the Appellant directly did he realise that they were not trying to fix him with this  
35 assessment".

9. The substantive Grounds of Appeal are as follows:

"Coyle Transport for which our client Michael Coyle was registered as sole proprietor was not the Coyle Transport which was operated by his father Mr Eamon Coyle, who was the registered owner of vehicle registration PHZ6358  
40 which was the vehicle involved in the interception by HMRC.

5 The address to which this correspondence was sent was not Michael Coyle's address. Michael Coyle only built at number 7 Dernalebe Road in 2014. The business Coyle Transport which related to this particular transport was the business of Michael Coyle's father, Mr Eamon Coyle. It is noteworthy that Mr Eamon Coyle was the person assessed for this debt. This can be seen from documentation obtained by HMRC. Therefore, this assessment does not relate in any way to our client".

10 10. The Application is opposed by HMRC on the basis that 'there has been a lengthy delay' - put at 4 years and 9 months - in bringing the Notice of Appeal. There is a cross-application by HMRC on the footing that if the Tribunal accepts that the assessment was not issued to the Appellant, then the Appellant cannot bring any appeal against an assessment which does not relate to him and so the Notice of Appeal would have to be struck out anyway on the footing that the Appellant has no standing.

11. As it clear from those parts of the Notice of Appeal set out above, the Appellant's application for an extension of time essentially pivots on the submission that the Notice of Assessment, being addressed to 'Coyle Transport' was not properly addressed, and therefore that time did not begun to run at all in relation to any appeal.

20 12. It is true that 'Coyle Transport' is neither a natural person (e.g., Mr X trading as 'Coyle Transport') or a legal person (e.g., Coyle Transport Limited). In this regard, Mr Manley placed reliance on *Queenspice Ltd v HMRC* [2010] UKUT 111 (TCC) where Lord Pentland, summarising the decision of May J (as he then was) in *House (trading as P & J Autos) v Customs and Excise Commissioners* [1994] STC 211 (upheld on appeal: [1996] STC 154) remarked that 'in judging the validity of notification, the test is whether the relevant documents contain between them, in unambiguous and reasonably clear terms, a notification to the taxpayer containing (a) the taxpayer's name; 25 (b) the amount of tax due; (c) the reason for the assessment; and (d) the period of time to which it relates": see Para [25](iii).

30 13. Although the Appellant's argument has some superficial attraction, it is nonetheless, in the circumstances of this application, misconceived.

14. Section 114 of the *Taxes Management Act 1970* is entitled 'Want of form or errors not to invalidate assessments etc' and allows certain errors to be ignored. Section 114(1) reads:

35 "An assessment or determination, warrant or other proceedings which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if 40 the person or property charges or intended to be charged or affected thereby is designated therein according to common intent and understanding."

15. I am satisfied that this section applies in principle to the documents which are in issue here. This accords with the recent decision of the Upper Tribunal (Judge Bishopp and Judge Brannan) in *HMRC v Mabbutt* [2017] UKUT 0289 (TCC) whereby the Upper 45

Tribunal considered and applied section 114 in the context of a letter sent to the taxpayer informing him that HMRC intended to enquire into his tax return "for the year ended 6 April 2009" where the reference to 6 April was a mistake, there being no tax year which ended on that date, but where HMRC instead intended to refer to the year ended 5 April 2009.

16. The Upper Tribunal, reversing the decision at first instance, held that the letter did constitute a valid notice of enquiry notwithstanding the mistake, and that its effect could be preserved by section 114. In reaching this conclusion, the Upper Tribunal adopted and applied the reasoning of another composition of the Upper Tribunal (Newey J and Judge Bishopp) in *GDF Suez Teeside Power Ltd v HMRC* [2017] UKUT 68 (esp at [115]-[166] of that decision): the important question to be asked was what the recipient would understand from the communication in question when it was objectively construed. This in turn appears an application into the context of taxation of the legal principles which otherwise pertain to the validity of notices, set out by a majority of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1995] 1 WLR 1508.

17. The following features are relevant to how the reasonable person, looking at the notices addressed to 'Coyle Transport' at 7 Dernalebe Road, would objectively have read them.

18. Mr Michael Coyle, describing himself as a sole proprietor, trading as 'Coyle Transport' at 7 Dernalebe Road, and giving his main business as lorry haulage, applied to be registered for VAT on 1 July 2010. Michael Coyle was trading as Coyle Transport at 7 Dernalebe Road.

19. When Officer McGuinness pulled over the lorry - in Mitcham, ostensibly en route from Calais via Dover to Liverpool - the driver (Mr Hilley) is recorded as having told HMRC (i) that he worked for Michael Coyle; (ii) that the lorry was Michael Coyle's vehicle; (iii) that Michael Coyle gave him instructions in relation to the journey, and the swapping of trailers; (iv) that he presumed Michael Coyle had paid for the tickets and transport. Mr Hilley did not mention Eamon Coyle at all.

20. Shortly thereafter, on 17 December 2012, the very first communication to HMRC in relation to this seizure comes from Michael Coyle. It is on 'Coyle Transport' headed notepaper, and gives the address as 7 Dernalebe Road. Michael Coyle (i) writes that he objects to the seizure 'of my truck and trailer' and (ii) confirms that he gave the driver instructions. This is entirely consistent with what the driver is recorded as having told HMRC a few days earlier. In the letter of 17 December 2012, Michael Coyle positively asserts that the vehicle belonged to him, and that he was the person trading from 7 Dernalebe Road as Coyle Transport. That letter does not mention Eamon Coyle, or indeed any of the matters subsequently relied upon by Michael Coyle in support of his appeal.

21. Letters sent to Coyle Transport at 7 Dernalebe Road were being sent to Michael Coyle's trading address.

22. It is simply not plausible that, in December 2012, there were two businesses - one run by the father, one run by the son - each trading from the same business premises, and each calling itself 'Coyle Transport'. The only evidence is that there was one person trading from 7 Dernalebe Road as Coyle Transport, and that was Michael Coyle.

5 23. No evidence of any character at all has been put before the Tribunal by Michael Coyle to prove (i) that Mr Eamon Coyle even exists; (ii) if he does exist (or did exist in December 2012) that Eamon Coyle - and not his son - owned the vehicle which was seized; (iii) that Eamon Coyle ever traded as 'Coyle Transport', let alone was trading as such in December 2012; (iv) that Eamon Coyle, even if trading as Coyle Transport,  
10 ever traded from 7 Dernalebe Road, let alone in December 2012.

24. On 15 July 2015, a 'Mr Coyle' - although no first name is recorded - 'phoned HMRC and a copy of the original September 2013 was sent to Coyle Transport at 7 Dernalebe Road.

15 25. On 23 January 2017, HMRC wrote to Michael Coyle, Coyle Transport, giving him warning that it would apply for a bankruptcy order against him. That attracted a response on 14 February 2017, but in unrevealing terms. It simply 'advised' that Michael Coyle *'has no liability to the Revenue in any regard and we are at a loss to understand why you have sent a warning of bankruptcy letter'*.

20 26. I am entirely satisfied that the correspondence and notices sent to Coyle Transport were received by Michael Coyle, and I am entirely satisfied that those documents, read objectively, would have been understood, at the time, read objectively, as being directed to the natural person actually conducting haulage business as 'Coyle Transport' at 7 Dernalebe Road and which operated the seized vehicle. The natural person conducting haulage business as Coyle Transport at 7 Dernalebe Road which was operating the  
25 seized vehicle was Michael Coyle.

27. Insofar as material, I am also entirely satisfied that Michael Coyle - contrary to the position which he now suggests - knew that the documents being sent to 7 Dernalebe Road addressed to 'Coyle Transport' were meant for Michael Coyle, and Michael Coyle alone; and were not meant for some other (unnamed) member of the Coyle family.  
30 Despite what is said in Grounds of Appeal, I have not been shown any document addressed to Eamon Coyle.

28. For the sake of completeness, the point about whether Michael Coyle 'built' at 7 Dernalebe Road in 2014 is not relevant. I do not understand what is meant by 'built', but 7 Dernalebe Road is the address - whether 'built' or not - which Michael Coyle was  
35 trading from in 2010, and which Michael Coyle was using on Coyle Transport's letterhead in December 2012.

29. Having dealt with that issue, then HMRC's cross-application falls away, and I can move to address the question of delay.

30. Although Mr Manley placed the decision of the First-tier Tribunal in *William Martland v HMRC* [2016] UKFTT 717 (TC) before me, this is not the most recent or authoritative account of the relevant principles to be applied to applications to bring late appeals. That is to be found in the decision of the Upper Tribunal in *Martland v HMRC* [2018] UKUT 178 (TCC).

31. This reads:

“44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in Denton:

(1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT “is unlikely to need to spend much time on the second and third stages” – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of “all the circumstances of the case”. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.

45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT’s deliberations artificially by reference to those factors. The FTT’s role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant’s case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal.”

32. The length of the delay was from 3 October 2013 (i.e., one month after 3 September 2013) to 10 July 2018. This is four years and 9 months. The delay is not very short. On any view, the delay is serious and significant.

33. No good reason is given for the delay. I have rejected the ostensible reason given for the delay, for the reasons set out above.

34. In evaluating all the circumstances of the case, I have dismissed the merits of the reason given for the delay. Michael Coyle knew of the seizure within days of it happening. He knew of the assessments when they happened. Further copy correspondence was sent in 2015. Mr Michael Coyle did not stir himself into any semblance of action until early 2017, when he was threatened with bankruptcy. Even then, the Notice of Appeal did not emerge until mid July 2018.

35. This appeal relates to events and a seizure which took place over 5 and half years before the Notice of Appeal was issued. The appeal relates to an assessment made in September 2013. The ordinary time to challenge the assessment and the penalty elapsed years ago. The passage of such a lengthy period of time inevitably affects the availability and reliability of evidence.

36. However, Michael Coyle's letter of 17 December 2012, being written so soon after the seizure, and therefore written whilst events were still very fresh, is important in this regard because it can safely be taken as setting out his best factual case as to why the lorry, the trailer, and its load should not have been seized (and, by inference, why he should not have been liable for any financial consequences flowing from that seizure).

37. However, that letter does not engage substantively at all with why the vehicle and its load were seized. It does not say where the vehicle had been, where it was going, what Michael Coyle believed it was carrying (other than he refers to a 'high valued load'), for whom, or on what terms.

38. Instead, the letter consists of a series of vague assertions that the driver was in Mitcham 'due to his own social interests', and that the driver wanted to park in a safe industrial area in Mitcham so that he could visit his girlfriend, and was 'spooked' by 'a few vehicles acting suspicious' which Michael Coyle now suggests or believes were 'from HMRC'.

39. But the seizure was not solely about the location of the vehicle. The CMR given by the driver to HMRC on 12 December was dated 10 December, and the driver was not able to explain why he had been travelling to and from France (both ways) on 11 December on a CMR dated 10 December.

40. The prejudice to HMRC that a matter long treated as closed would not be reopened. The prejudice to Mr Michael Coyle would be that he is not able to challenge the assessments and penalties.

41. Nonetheless, and even though the assessments are for a significant sum of money, it is my view, taking all the above into account, and conducting the balancing exercise, that permission to appeal out of time should be refused.

## **Outcome**

42. I refuse permission for a late appeal.

43. This document contains full findings of fact and reasons. 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.

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**DR CHRISTOPHER MCNALL  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 JANUARY 2019**