



Neutral Citation: [2023] UKFTT 629 (TC)

Case Number: TC08867

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

London

Appeal reference: TC/2022/11122

*EXCISE DUTY – refusal to restore – late review request – Tribunal jurisdiction – HMRC
ordered to review refusal decision*

Heard on: 24 July 2023
Judgment date: 25 July 2023

Before

**TRIBUNAL JUDGE ANNE FAIRPO
DUNCAN MCBRIDE**

Between

UAB JUSTTRANS

Appellant

and

DIRECTOR OF BORDER FORCE

Respondents

Representation:

The appellant did not appear and was not represented

For the Respondents: Ms Lewis of counsel, instructed by the General Counsel and Solicitor
to HM Revenue and Customs

DECISION

Introduction

1. The appellant's tractor unit was seized at Dover on 24 August 2021. Following correspondence with HMRC regarding restoration, HMRC refused to restore the unit. The appellant submitted a request that they review the refusal but HMRC refused the review request on the grounds that it was made out of time. The appellant then appealed to this Tribunal.
2. Neither the appellant nor his representative appeared at the hearing. The Tribunal attempted to contact the appellant and his representative but had no response to telephone calls. It was clear from the papers provided by the appellant in advance of the hearing that they had had notice of the hearing, as the notice of hearing was included in those papers.
3. We concluded therefore that it was in the interests of justice that we should proceed in the absence of the appellant.

Nature of the appeal

4. The appellant's appeal to this Tribunal was a substantive appeal against the refusal to restore. However, this Tribunal's jurisdiction is limited in cases of this nature to considering appeals against a review decision (para 16 of the Taxes Management Act 1970); we have no jurisdiction to consider an appeal against a restoration refusal which has not been reviewed.
5. We have therefore treated the appellant's appeal as an appeal against HMRC's refusal to accept the late request to review the refusal decision. HMRC agreed that the appeal should be treated in this way.

Background

6. The decision refusing restoration was issued on 4 November 2021 and advised the appellant that any request for review needed to be made within 45 days, by 19 December 2021.
7. The appellant director wrote, by email, to HMRC on 3 January 2022 asking for a review of the refusal decision. On 10 January 2022, in response to a request from HMRC for more information as to the delay, he advised that he had been ill with Covid and had been in hospital for two weeks, leaving hospital only a week before Christmas.

Submissions and discussion

8. HMRC contended that no good explanation had been received from the appellant as to why the request has been made late, either at the time of the request or later. He had provided no documentary evidence to support his statement that he had been ill. HMRC submitted also that the loss of the right to appeal did not breach the appellant's ECHR Right to a fair trial, and the 45 day limit in cases such as these was described as "generous" by the High Court in *The Commissioners of Customs and Excise v Ronald Angliss* [2002] EWHC 1311(Ch) at [34].
9. We considered the case law with regard to late requests such as these and concluded that we agree with Judge Popplewell's reasons and conclusion in paragraph 28 of *SC Duvénbeck Logistik SRL v The Director of Border Revenue* [2021] UKFTT 0319 (TC) that our jurisdiction is appellate and that we are not restricted to considering only reasonable excuse when deciding whether or not HMRC should be ordered to carry out a review out of time. Instead, the three-stage test in *Martland v HMRC* [2018] UKUT 178 (TCC) should be applied. HMRC did not disagree that this was the correct test.
10. We have therefore followed the three-stage test in *Martland*, that we should:
 - (1) establish the length of the delay and whether it is serious and/or significant;

- (2) establish the reason(s) why the delay occurred; and
- (3) evaluate all the circumstances of the case, using a balancing exercise to 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, and in doing so 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”.

11. The length of the delay was 15 days. We do not consider that this delay was either serious or significant.

12. The reason given for the delay was that the appellant director (and other members of his family) had been ill, and he had been hospitalised, with COVID during December 2021 and had left hospital about a day or so before the deadline for responding to HMRC.

13. Considering all of the circumstances, and in particular:

- (1) we have concluded that the delay was neither serious nor significant;
- (2) we also note that the delay effectively took place over the Christmas and New Year period and that the appellant left hospital a week before Christmas, noting also that leaving hospital does not necessarily mean that the person is fully recovered. Whilst these are not necessarily good reasons on their own to allow for a late appeal against a refusal to restore, we do consider that they form part of the circumstances which must be considered;
- (3) although the reason given for the delay was unsupported by documentary evidence, we did not consider that there was any reason to suppose that it was not genuine.

14. Whilst it is, clearly, important that time limits are respected and we note that HMRC will suffer some prejudice given the need to reopen this case, we consider on balance in all of the circumstances that HMRC should be and hereby are ordered to review their decision to refuse restoration.

Right to apply for permission to appeal

15. 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: 25th JULY 2023