



Neutral Citation: [2023] UKFTT 990 (TC)

Case Number: TC09001

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/12135

LATE APPEAL-Martland applied-30 day delay-whether significant or serious-reasons for the delay-consideration of all the circumstances-application refused

Heard on: 20 September 2023

Judgment date: 22 November 2023

Before

TRIBUNAL JUDGE MARILYN MCKEEVER

Between

JANCH LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Peter Hastings, solicitor

For the Respondents: Mr James Abernethy of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. The form of the hearing was V (video). All parties attended remotely and the hearing was held on the Tribunal's VHS platform. The documents to which I was referred are an Application Hearing Bundle of 380 pages, an additional letter submitted by the Appellant dated 23 September 2019, an additional letter dated 10 September 2019 submitted by HMRC, Mr Hasting's witness statement dated 14 September 2023 and Skeleton Arguments from both parties.

2. Mr Hastings had submitted his witness statement to the Tribunal one day late. HMRC objected to its admission, although Mr Abernethy indicated that he had been able to consider it and had prepared to cross-examine Mr Hastings.

3. I considered that it would be helpful to hear Mr Hasting's evidence as he had acted for the Appellant in this matter and his evidence concerned the critical issues in the application. I allowed the witness statement to be admitted and Mr Hastings gave oral evidence at the hearing.

4. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

5. I gave my decision, refusing permission to appeal out of time at the end of the hearing. HMRC were content with a short decision, but Mr Hastings wanted to take instructions as to whether his client might wish to appeal before agreeing to a short decision. I issued Directions giving the Appellant until 4pm on 3 October 2023 to indicate to the Tribunal whether it required a full decision or was content with a short decision. On 5 October, Mr Hastings informed the Tribunal he did not currently have instructions to lodge an appeal. On the same date, HMRC applied for full written findings and reasons for the extempore decision delivered at the hearing on 20 September.

6. I have considered all the submissions and authorities referred to by both parties but have not necessarily set all of them out in detail in this decision.

BACKGROUND

7. The substantive issue concerns an appeal against two decisions of HMRC and a C18 Post Clearance Demand.

(1) The first decision, issued on 1 April 2022 concerned underpaid import duty in the sum of £162,986.10.

(2) The second decision, also issued on 1 April 2022, concerned underpaid import VAT in the sum of £387,606.54.

(3) The C18 Demand was issued on 7 April 2022 and related to both import duty and VAT.

8. HMRC alleged that there had been an underpayment of import duty and VAT because the goods imported by the Appellant had been undervalued and the conditions for Onward Supply Relief (from VAT) had not been satisfied.

9. Strictly, the 30 day appeal period ran from the date of the decisions, 1 April 2022, but as the C18 Demand also said that the Appellant needed to appeal within 30 days, HMRC has treated the 30 days as running from 7 April. Accordingly, the Appeal should have been submitted by 7 May 2022. The appeal was submitted on 7 June 2022, 30 days late.

THE FACTS

10. Janch Limited is a UK incorporated company with a registered office in Ipswich in the same building as its accountants. Although the address is slightly different from the accountant's address, I am satisfied that correspondence sent to the registered office would have been received by the Appellant's accountant. The Appellants Skeleton Argument indicates that the Appellant is a Chinese business whose directors and owners are based in China. The records at Companies House show that there are two directors; a Chinese national resident in Italy and a French National resident in France. The "Person with Significant Control" is the French director.

11. The Appellant imports clothes from China. It then exports them to another company, Secolo, based in France and Spain.

12. On 20 August 2019 HMRC wrote to Janch to say that they were enquiring into possible import fraud. In particular, they were aware of claims for Onward Supply Relief (OSR) from VAT where incorrect values had been used which affected the amount of duty and tax. The letter referred to an import declaration of 10 July 2019 made by Janch and stated that on reviewing the goods and the supporting documents HMRC considered the values declared to be sufficiently low as to give rise to "reasonable doubts" that the values declared represented the full amount paid or payable. The letter went on to say HMRC were intending to require financial security in order to release the goods. A similar letter of 23 August 2019 required security to release an import declared on 24 July 2019. Further letters also required security in relation to other goods.

13. The Appellant's accountant, Pro Tax Plus Accountants (Pro Tax) wrote to HMRC on 5 September 2019 in response to HMRC's letter of 20 August 2019. This indicates that Pro Tax received letters sent to the Appellant. The letter asserted that HMRC's figures were too high in relation to the sales and prices declared by Janch. It set out a table showing the prices charged by Janch to its client, Secolo (which appears to be Janch's only client) and prices said to be charged by a competitor of Secolo to its clients, together with links to the websites of companies selling budget clothes such as Primark and Wish and Everything5pounds. Two price lists were attached; Secolo's price list and a price list for its competitor. The letter also asserted that Janch complies with the requirements for OSR.

14. HMRC sent a further letter to Janch on 10 September 2019 which referred to an email but seems to be a reference to the 5 September 2019 letter (which may have been sent by email though I do not know if this is the case). HMRC's letter said that having considered the information and documents provided, financial security would be required to release the goods. It also said there would be a post clearance audit which would review the Appellant's books, documents, digital records, etc.. Mr Hastings was not aware of any information other than the 5 September 2019 letter which had been provided. A letter of 21 October 2019 from HMRC imposed a requirement to pay security.

15. The Appellant has paid security totalling £372,652.82 on various consignments.

16. In November and December 2021, Mr Hastings had correspondence with HMRC in relation to Janch. At that time, he was acting for a company called Loading Centre which provided services to Janch including handling services and obtaining customs clearance. In the course of that correspondence, Mr Tindall (HMRC's decision maker in the present matter) informed Mr Hastings that Janch had claimed Onward Supply Relief. This operates to defer the VAT payable in the UK so that it is paid in the destination country. Mr Tindall stated that their checks showed that VAT had not been paid in the destination country and it was still outstanding. Mr Hastings asked where it said that VAT had to be paid and Mr Tindall provided him with links to the appropriate information.

17. There was no further correspondence (or at least there was none in the bundle) until 6 January 2022. This related to one of the import entries in 2019 and was headed “Check of Customs and international trade records”. The reasons for the check included checking the values of the goods and that the amounts of the import duty and VAT declared were correct. It was also to enable HMRC to review the securities paid. The information required was as follows:

“The List of records I need to see are listed below:

- 1) The last 3 years filed annual accounts
- 2) Certificate of Incorporation
- 3) Company Structure / Organisation
- 4) Full list of employees
- 5) Details of all associated UK, and non UK companies, past and present
- 6) Details of all bank accounts used including non UK – sort code and bank account number
- 7) Copies of all bank statements since you began trading to date
- 8) Full list of supplier’s, (sic) including contact details and addresses
- 9) Full list of customer’s, (sic) contact details, addresses and VAT number – UK, EU and o/s EU
- 10) Full list of all freight agents used
- 11) List of all freight forwarders and warehouses (UK and non UK) used for the storage, transshipment and haulage (company name, address telephone number and VAT number);
- 12) Evidence of quality/management checks completed
- 13) Provide their documented operating procedures for imports

Accounting records:

- 14) What computerised accounting package do you use?
- 15) All Customer account activity for all customers since you began trading;
- 16) All supplier account activity for all suppliers since you began trading;
- 17) Full list of all nominal codes and descriptions used within the computerised package;

For each import entry on the attached ‘entry selections’ I will need to see the following:

- 1) Import clearance instructions
- 2) C88 / E2 Acceptance
- 3) Purchase order
- 4) Commercial invoice from your Chinese supplier
- 5) Evidence of payment to your supplier, to include remittance advice
- 6) Packing list
- 7) Bill of Lading / Air Way Bill
- 8) International Freight invoice
- 9) Delivery Note / Goods received note”

18. Neither the Appellant nor its accountant responded to this letter and no information was supplied then or subsequently.

19. On 24 January 2022, Mr Tindall wrote a “reasonable doubts” letter to Janch stating that the differences between the low values it had declared for imported goods and the values declared by other importers were such as to give HMRC reasonable grounds for doubting the declared prices and customs values. Mr Tindall formally offered the Appellant the opportunity to provide additional information and evidence to dispel the doubts about the correct values. The doubts related to all imports between March and August 2019. Mr Tindall informed the Appellant where it might find guidance as to the sort of evidence which was needed. The letter required any information and evidence to be provided by 7 February 2022 and made it clear that if no information was provided, HMRC could substitute their own values and determine the VAT and duty on that basis.

20. No information was provided in response to this letter.

21. On 11 February 2022 HMRC issued two “right to be heard” letters, the first dealing with import duty and the second with VAT. These stated that import duty of £169,423.37 and import VAT of £403,155.11 was due. The letters included details of how the amounts had been calculated. The letters stated that Post Clearance Demands would be sent separately, but before they were issued, the Appellant had the right to comment on the calculations and the findings and to provide information that might change the amount due. The Appellant had until 13 March 2022 to provide any such comments or information and had the opportunity to request more time if needed.

22. The Appellant did not respond to these letters and no information was provided.

23. On 1 April 2022, Mr Tindall sent decision letters relating to import VAT and duty respectively. Some of the entries originally included were out of time and the VAT and duty were reduced to £387,606.54 and £162,986.10 respectively. The letters stated that they were for the Appellant’s records and a Post Clearance Demand would be sent shortly. The amount of VAT was subsequently amended, by a letter dated 8 December 2022, to £369,637.61 to take account of the security held.

24. The letters offered the Appellant a statutory review and set out the right to appeal to the Tribunal, stating the deadline was 30 days from the date of the letter in each case.

25. The Demand Note was sent on 7 April 2022 for a total amount of £550,592.64. The Demand Note again set out the rights for the Appellant to request a review or appeal to the Tribunal and stated the 30 day deadline. Strictly, the 30 days for requesting a review or appealing run from the date of the decision letter; 1 April, but as these rights were reiterated in the Demand Note, HMRC have put their case on the basis that the Appellant should have appealed within 30 days of the Demand Note, i.e. by 7 May 2022.

26. The Appellant appealed to the Tribunal on 6 June 2022, 37 days late, but I will treat it, as HMRC has done, as being 30 days late.

27. The grounds of appeal stated in the Notice of Appeal were:

- (1) “There had not been any mis-declarations of the value as alleged or at all.
- (2) OSR should be allowed.
- (3) The Respondent has received significant payments by way of security which should be released to the Appellant.
- (4) Further particulars will be provided in support of the appeal.”

28. The assertions in (1) to (3) are clearly not grounds of appeal. No further particulars have been provided, despite the passage of some 15 months between the appeal and the hearing.

29. In an email dated 20 October 2022, Ms Wong of HMRC asked Mr Hastings to provide, among other things, further particulars in support of the appeal, so HMRC could consider their position. Mr Hastings replied on the same day saying that he would need to take instructions and he believed his instructing client was in China. He also asked Ms Wong why HMRC considered OSR did not apply. Ms Wong replied on the 24 October to say that their position would be set out in the Statement of Case which could only be prepared once they had received further particulars of the grounds of appeal. Mr Hastings said he could not provide particulars until HMRC said why OSR is not available. Ms Wong replied, explaining that the burden of proof was on the Appellant and that HMRC could not set out its position until the Appellant had provided proper grounds of appeal:

“The rules are clear in that the Appellant is to provide their particularised grounds of appeal before the Respondent replies. I refer you to Rule 21(2)(g) [of the Tribunal Rules] and further to *Rapid Brickwork Ltd v HMRC* [2015] which supports that specified grounds must be provided by the Appellant when the appeal is made, and that HMRC’s Statement of Case is a response to those grounds. If the grounds are not properly particularised, the appeal cannot proceed.

For clarity, it is not for us to demonstrate before receipt of your properly particularised grounds that OSR does not apply, it is for your client to demonstrate that OSR does apply. This can be done in the form of further particulars, which you advised within the Notice of Appeal would follow. Thereafter, HMRC can reply accordingly within the Statement of Case (again, if permission to appeal is granted).”

30. The Appellant did not provide any further information. Ms Wong, in an email of 27 October said that as Mr Hastings was taking instructions, she would allow him until 2 November 2022 to provide the information.

31. Mr Hastings responded to say he would try and respond by 18 November 2022 and asked again why HMRC considered OSR was not available and why HMRC considered that the values had been underdeclared. Ms Wong again informed Mr Hastings that the Appellant bore the burden of proof and pointed out that he had had ample time to obtain the information required to provide further and better particulars of the grounds of appeal which would enable HMRC to prepare their Statement of Case. She requested a response by 9 November 2022.

32. On 7 November Mr Hastings emailed Ms Wong to say he was still seeking clarification from the Appellant and its accountant. It appears he attached a copy of the 5 September 2019 letter. Ms Wong responded on 12 December 2022 to say that the contents of the letter were noted but did not change HMRC’s decision. In the absence of any information from the Appellant she had prepared an application to the Tribunal for further and better particulars of the grounds of appeal. Mr Hastings asked what was required. Ms Wong responded on 14 December:

“Further to your request for further detail, I refer to my earlier emails detailed below: -

- 20 October 2022 – I asked for further information about the late appeal, and for the further particulars in support of the appeal.
- 27 October 2022 – I chased the further information and particulars, and advised if I did not receive the same I would proceed to make an

application. We corresponded further on that day, and I asked that the information be provided to me by 9 November 2022.

Despite a number of weeks passing since my last email, I am yet to receive anything further from you. As such, I have prepared the application which will be filed shortly.”

33. On 14 December 2022, HMRC filed an application dated 13 December 2022 for Further and Better Particulars and also objected to the late appeal. On 14 December Mr Hastings objected to the application.

34. On 22 May 2023, the Tribunal issued a notice of hearing to consider the Appellant’s application for permission to appeal out of time and HMRC’s application for further and better particulars.

35. On 20 August 2023 Mr Hastings again asked for HMRC’s evidence and grounds for disputing the Appellant’s valuations. Ms Wong, in an email of 22 August 2023 referred to the previous correspondence including the right to be heard letters and the guidance provided by Mr Tindall. She reiterated that it was for the Appellant to provide particularised grounds of appeal. On 30 August, Mr Hastings emailed Ms Wong to say that he had managed to obtain some instructions and that he would be able to file the further and better particulars by 20 October 2023. In the Appellant’s Skeleton Argument dated 13 September 2023, Mr Hastings stated that the amended Grounds of Appeal would be lodged by 31 October 2023.

36. Mr Hastings’ Witness Statement, dated 14 September 2023, stated that he was instructed that the VAT was accounted for and paid on the goods and that evidence of this would be provided to him. He repeated that the Appellant would provide amended grounds of appeal on or before 31 October 2023 and stated that the Appellant “is now fully engaged on this matter and is aware that all directions need to be complied with.”

37. Nothing had been provided by the date of the hearing: 20 September 2023. Mr Hastings could only say that his instructions were that the documents and evidence would be produced. He had had a Teams call with his client at the end of August and his instructions were that they would be seeking the information from Secolo, which has the information. He stated that Janch understand the seriousness of the situation. No information had been received by the date of the hearing, nearly three weeks later, nor was there any update or information about what Janch was now doing to obtain the evidence.

38. The Appellant has had over 15 months since making the appeal to provided proper grounds of appeal and has failed to do so. Nor is there any evidence that the Appellant is now taking steps to obtain the relevant information other than Mr Hastings’ statement that he is instructed it is going to do so.

39. I now turn to the reasons for the appeal being late.

40. In the Notice of Appeal (signed by Mr Hastings), the reason for the appeal being late was stated to be:

“The letter did not come to the attention of the Appellant and its advisors until 6 June 2022, The Respondent has not been prejudiced. The Respondent was aware from 2019 of the dispute. The owner of the Appellant is based in China.”

41. Only the first sentence is relevant. It suggests that the accountants and/or Mr Hastings had not seen “the letter” until 6 June 2022. As noted, the directors and “person with significant control” of the Appellant are based in Europe.

42. In cross-examination, Mr Hastings was somewhat evasive about which letter was referred to in the Notice of Appeal, despite the fact that the 7 April 2022 letter (the Demand Note) was attached to it. In the “Document checklist” which requires the Appellant to select which letter they are enclosing with their appeal, Mr Hastings had ticked the box for “review conclusion letter” rather than “original notice letter or decision document”. No review had been conducted. No other document or letter was referred to.

43. In the Appellant’s Skeleton Argument Mr Hastings stated that the delay was due to:

(1) “Delays with the Appellant’s accountants dealing with letter (sic) dated 7 April 2022 who passed the said letter to Rogers and Norton [Mr Hastings’ firm] on 23 May 2023 and

(2) Dealing with compliance matters for Rogers and Norton to progress the case. The Appellant is in effect a Chinese business whose directors and owners are based in China”.

44. This was the first time specific reasons for the delay had been provided. In an email dated 20 October 2022 Ms Wong had asked Mr Hastings for the date the Appellant said the demand note was received at its business address and an explanation for any delay between the receipt of the letter at the business address and the appeal being filed. At that point, HMRC were prepared to reconsider their position on the late appeal if they received this information. No reasons were provided until the filing of the Skeleton Argument a week before the hearing.

45. The delays of the accountants were mentioned for the first time in the Skeleton Argument. Mr Hastings was unable to say why the accountants had delayed in dealing with the Demand Note.

46. The first reason is inconsistent with the reason for lateness in the Notice of Appeal as it indicates that the accountants had received the letter on or before 23 May 2022.

47. There was conflicting evidence about when Mr Hastings became aware of the Demand Note and what he did.

48. The Skeleton Argument stated that the Demand Note was passed to his firm by the accountants on 23 May 2022. At that point, the Appellant was already out of time to appeal by 16 days.

49. In his Witness Statement, Mr Hastings said:

“The Appellant have relied on its accountants to deal with this matter. The accountants contacted me on 17 May 2022 concerning the Demand to pay, and I took immediate steps to deal with this. The Respondent was made aware that I was acting. I had to deal with compliance issues and required all relevant documentation from the Officer dealing with this matter. He was away until 6 June 2022. The Appeal was lodged on 7 June 2022.”

50. This indicates Mr Hastings was aware of the demand on 17 May and the Skeleton Argument states his firm received a copy of the letter on 23 May.

51. In oral evidence, he said that the accountants had received the letters addressed to Janch and it was the demands for payment which triggered the referral to him in May. He became evasive when asked directly whether the accountants had sent the 7 April 2022 letter to him.

52. Nor did he give a straight answer when asked whether he accepted that the accountants had contacted him on 17 May regarding the demand to pay-as he had stated in his witness statement, so that the advisors did know about the demand before 6 June 2022.

53. Mr Hastings subsequently said that when the accountants had contacted him it was about a conversation with HMRC and they attached the right to be heard letters from 2019, not the latest document. I do not find this credible.

54. Having considered Mr Hastings's witness statement, the Appellant's Skeleton Argument and the oral evidence, I find it more likely than not that the accountants had received the 7 April 2022 Demand Note before 17 May 2022 and that Mr Hastings became aware of it on 17 May and received a copy on 23 May 2022.

55. The second reason for the appeal being late was that, having become aware of the issue, Mr Hastings had to deal with compliance issues as he was not formally instructed to act by Janch until 23 May 2022. In an email to Ms Wong of 31 August 2023 Mr Hastings said he was instructed to act on 17 May 2022 but had to deal with compliance matters and also obtain and review all papers. Having requested the papers from Mr Tindall on 23 May 2022 he received an "out of office" message. He said he could not submit the appeal before seeing all the papers. Mr Tindall sent him the papers, including the 7 April Demand Note and the February 2022 right to be heard letter, on his return to the office on 6 June 2022. Mr Hastings submitted the appeal on 7 June 2022.

56. On 17 March 2022, Mr Hastings sent an email to Mr Tindall saying that he had been instructed by Janch Ltd.. He said he had had Covid and would be returning to the office the next day. He said he had seen the letters dated 16 February 2022 (These were the right to be heard letters which were in fact dated 11 February 2022) and asked for 14 days to respond.

57. Mr Tindall replied on the same day asking for "a response explaining your clients (sic) reasons for disputing the amounts stated in the letter dated 16 [11] February 2022 no later than 31 March 2022".

58. Mr Hastings did not respond.

59. On 28 March 2022 Mr Tindall asked for a copy of the instructions from Janch. On 23 May 2022, Mr Hastings sent Mr Tindall an authority from Janch dated 20 May 2022 authorising Rogers & Norton to act on its behalf "on all issues between HM Revenue & Customs".

60. In oral evidence, Mr Hastings said that he was not fully instructed until 23 May and the March correspondence was just "dipping his toes in the water". When asked why he had not dealt with the compliance issues in March he replied that he did not need to as he was not formally instructed until he was asked to deal with the Demand in May. Only then did he need to deal with compliance and obtain money on account before he could act. He also wanted to see all the documents before he appealed.

61. I note that Janch's authority was dated 20 May 2022, so Mr Hastings must have asked for it before then and he must have asked for the authority because Janch wanted him to deal with HMRC in relation to the VAT and duty. He clearly stated to HMRC in March that he was instructed to act by Janch, he specifically referred to the right to be heard letters and indicated he would be responding to them, although he never did. I do not accept that Rogers & Norton were only instructed to act on 23 May 2022 and find that they were instructed in March 2022. Compliance matters should have been dealt with at that time. There seems to be no reason why compliance matters were not dealt with until May.

62. Pro Tax were already acting for Janch. Mr Hastings was asked why he did not ask the accountants to deal with an appeal. He said that the accountants had asked him to deal with it and it did not occur to him to ask them to do so.

DISCUSSION

63. It is common ground that I should apply the three stage test in *Martland v HMRC* [2018] UKUT 178 (TCC) (*Martland*), in deciding whether or not to allow permission to appeal out of time.

64. It was made clear in *Martland* at [29] that the presumption is that the statutory time limit should be respected and it is for the applicant to satisfy the FTT that permission to appeal should be granted.

65. The three stage test is set out at [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.”

The length of the delay

66. The appeal was 30 days late. Strictly, it was 37 days late, but HMRC have treated the delay as 30 days as set out above.

67. A 30 day delay is not “very short”, and even if it was, it would not follow that permission should be granted.

68. In *The Secretary of State for the Home Department v SS (Congo) and others* [2015] ECWCA Civ 387 the Court of Appeal at [105] held that to exceed a 28 day time limit by 24 days was a significant breach and a three month delay was on any view a serious breach. *SS (Congo)* was referred to by the Upper Tribunal in *Romasave (Property Services) Limited v HMRC* [2015] UKUT 0254 (TCC) at [96] where the Tribunal emphasised that time limits imposed by law should generally be respected.

69. A 30 day delay, in the context of a 30 day time limit is a significant delay and clearly merits the Tribunal considering steps two and three as set out in *Martland*.

The reasons for the delay

70. Mr Hastings was contacted by the accountants on 17 May 2022 in connection with the demand issued on 7 April 2022. By this time, the 30 day time limit had already passed. It was quite clear from both the decision letters of 1 April 2022 and the Demand Note of 7 April that the Appellant had to act within 30 days.

71. In an email of 20 October 2022-nearly a year before the hearing-Ms Wong asked Mr Hastings for the date when the demand was received at the Appellant’s business address and for an explanation of any delay between receipt of the letter and the filing of the appeal. At

that point, HMRC were prepared to reconsider their position (about allowing a late appeal) depending on the information provided.

72. The question about the date of receipt of the Demand has never been answered. No explanation has been provided for the accountant's delay. The first time any explanation for any of the delay was offered was in the Appellant's skeleton argument of 13 September 2023, a week before the hearing. It was stated that the delay "was due to (a) delays with the Appellant's accountants dealing with the letter dated 7 April 2022 who passed the said letter to Rogers and Norton solicitors on 23 May 2023 and (b) dealing with compliance matters for Rogers and Norton to progress the case."

73. Mr Hastings' witness statement, submitted less than a week before the hearing, said that the Appellant relied on its accountants to deal with the matter and that the accountants contacted him on 17 May 2022 concerning the Demand and he took immediate steps to deal with it. He had to deal with compliance issues and required all documentation from the Officer dealing with the matter.

74. I have referred above to the inconsistencies between each of these statements and between the statements and Mr Hastings' oral evidence. I found that he began acting for the Appellant in March 2022. He had stated to HMRC that he was acting for the Appellant and was engaged in substantive correspondence. I found there was no good reason for the delay in carrying out the compliance and if Mr Hastings did not consider he needed to do the compliance when corresponding with HMRC in March, it is difficult to understand why the need for compliance should have delayed the making of the appeal.

75. Mr Hastings also said he did not have the necessary documents to enable him to submit the appeal. Mr Hastings' email to HMRC of 17 March 2022 stated that he had seen copies of the right to be heard letters of 11 February 2022 (wrongly referred to as 16 February). He was aware of the sums claimed and he requested time to respond as he said the sums claimed were disputed. He was given until 31 March to respond and failed to do so. The right to be heard letters stated that a Post Clearance Demand would be sent separately. They also gave the Appellant the opportunity to comment or provide information by a deadline. The letters went on to say "If I do not hear from you by the above date [which, as noted, was extended], I'll take this to mean that you agree with my findings. I'll then send you a decision letter which will give you more information on how to pay the amount due". Mr Hastings was, accordingly, aware that a Demand would be issued if he failed to respond by the 31 March deadline. I have also found it more likely than not that Mr Hastings received a copy of the Demand on 23 May 2022 as stated in his skeleton argument.

76. He certainly had enough information to submit an appeal. The appeal, when it was filed, did not set out adequate grounds of appeal. Such a Notice of Appeal did not require sight of any additional documents and could have been submitted earlier.

77. It had not occurred to Mr Hastings to ask the accountants, who had no compliance issues and had seen all the documents, to submit the appeal.

78. In short, I do not consider that either the accountants or Mr Hastings had good reasons for submitting the appeal late. The Appellant appears to have taken no part in the proceedings.

79. In *HMRC v Katib* [2019] UKUT 0189 (TCC), the Upper Tribunal said at [49] that, in most cases, when the FTT is considering an application for permission to make a late appeal, failings by the litigant's advisers should be regarded as failings of the litigant. The Tribunal expanded on this at [54] of the decision explaining why that is so.

“54. It is precisely because of the importance of complying with statutory time limits that, when considering applications for permission to make a late appeal, failures by a litigant’s adviser should generally be treated as failures by the litigant. In *Hytec Information Systems v Coventry City Council* [1997] 1 WLR 666, when considering the analogous question of whether a litigant’s case should be struck out for breach of an “unless” order that was said to be the fault of counsel rather than the litigant itself, Ward LJ said, at 1675:

Ordinarily this court should not distinguish between the litigant himself and his advisers. There are good reasons why the court should not: firstly, if anyone is to suffer for the failure of the solicitor it is better that it be the client than another party to the litigation; secondly, the disgruntled client may in appropriate cases have his remedies in damages or in respect of the wasted costs; thirdly, it seems to me that it would become a charter for the incompetent (as Mr MacGregor eloquently put it) were this court to allow almost impossible investigations in apportioning blame between solicitor and counsel on the one hand, or between themselves and their client on the other. *The basis of the rule is that orders of the court must be observed* and the court is entitled to expect that its officers and counsel who appear before it are more observant of that duty even than the litigant himself. [emphasis added]”

80. It would be for the Appellant to show that that his advisers’ failings should not be attributable to him by producing all the correspondence between them. There has been no such evidence in this case.

81. I conclude that the Appellant had no good reasons for the delay.

All the circumstances of the case

82. The third stage of the process is to consider all the circumstances of the case and to carry out the balancing exercise mandated by *Martland*.

83. Mr Abernethy for HMRC submitted that the need for statutory time limits to be respected was a matter of particular importance in late appeal cases (*Katib*). An appellant must show good reasons if proceedings are brought outside the normal time limits specified by Parliament (*Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218, which was quoted in *Martland*).

84. The FTT in *Rose v HMRC* [209] UKFTT 189 (TCC) stated that there is a public interest in ensuring the time limits set by Parliament are observed and if late appeals were allowed without good reasons, it might encourage others to regard time limits as optional.

85. In *Martland*, the Tribunal emphasised the particular importance, in carrying out the balancing exercise, for litigation to be conducted efficiently and at proportionate cost.

86. Mr Abernethy also submitted that if permission is given, there is prejudice to HMRC as HMRC would have to devote its finite resources to a matter which it considered final, rather than using those resources for other appeals or projects.

87. *Martland* makes clear that the Tribunal should not enter into a detailed consideration of the underlying merits of the appeal, but it can have regard to any obvious strengths or weaknesses of the Appellant’s case as this goes to the question of prejudice.

88. The Appellant submits that there are good grounds to allow the appeal to proceed.

89. The Appellant submits that if it is not allowed to appeal it will suffer significant prejudice as it will have to pay over half a million pounds in VAT and import duty and it

asserts that this is likely to lead to insolvency. The Upper Tribunal in *Katib* suggested at [60] that the FTT should not give great weight to the financial hardship which might be suffered by the appellant as this is a common feature affecting many appellants.

90. I have considered all the submissions and the evidence. I find it of particular significance that the Appellant has failed to engage with this matter from the outset and is still failing to take any steps to obtain or provide the information which might support its appeal.

91. HMRC raised its “reasonable doubts” about the value of the goods being imported in August 2019. The only communication from the Appellant in the four years since then was the letter from the accountants in September 2019 which provided some information about prices charged by the Appellant’s customer’s competitors and asserted that the values were correct. This letter was considered by HMRC but did not affect the decision to require security.

92. No further information has been provided.

93. The sort of information and evidence which would be relevant was set out in HMRC’s letter of 6 January 2022. The Appellant has never responded to this, or to any other requests for information.

94. In the reasonable doubts letter of 24 January 2022 Mr Tindall indicated where the Appellant would find guidance as to the sort of evidence needed to rebut HMRC’s doubts.

95. HMRC has made it clear to Mr Hastings on several occasions that the burden of proof is on the Appellant to prove the value of the goods it has imported and to prove that it is entitled to OSR.

96. Mr Hastings asserted, in his witness statement, that he is instructed that VAT on the goods was accounted for and paid by Secolo and that evidence of this would be provided to him. This appears to have been the result of a Teams call between Mr Hastings and his client at the end of August 2023. Mr Hastings said that his instructions were that his client will be seeking information from Secolo. I do not know whether they have done so or not, but no evidence was available at the time of the hearing.

97. In April 2022 HMRC demanded import duty and VAT of more than £550,000 from the Appellant. I find it astonishing that more than sixteen months later the Appellant has not even started the process of obtaining the information which might help its case on OSR and has not provided the evidence about the valuation of the goods, which is within its own possession, and which is necessary in relation to the VAT issue.

98. The grounds of appeal set out in the Notice of Appeal are inadequate. The Notice of Appeal, submitted more than 15 months before the hearing, stated that “Further Particulars will be provided in support of the Appeal”. Despite repeated requests by HMRC, no particulars have been provided.

99. On 30 August 2023 Mr Hastings emailed Ms Wong to say he had managed to obtain some instructions. He hoped to deal with the delay point by 4 September (but did not) and he said he would be able to file amendments to the Appeal and Further Particulars by 20 October 2023. By the time of his witness statement and skeleton argument, two weeks later, the timescale for providing amended grounds of appeal had slipped again to 31 October 2023.

100. Mr Hastings suggested that the Appellant should be given one last chance and I should grant permission to appeal but should make an “unless” order under which the case would be struck out if grounds of appeal were not provided by a sensible date, which he suggested should be no earlier than 20 October 2023.

101. In considering whether to grant permission to appeal, I have taken into account the need for statutory time limits to be respected. I have found that there were no good reasons for failing to meet those time limits.

102. I have been particularly mindful of the need for litigation to be conducted efficiently and at proportionate cost. It will be clear from the above that the Appellant's approach to litigation is far from efficient and allowing the appeal to continue will cause more costs to be incurred to the detriment of the public purse. The Appellant has failed to provide any indication of any proper grounds of appeal in the considerable period since the Notice of Appeal was filed. Given its lack of engagement with the case and its failure to date to provide or seek the information which would form the basis of its appeal, I am not confident that grounds of appeal will be provided in a timely fashion.

103. I gave serious consideration to the proposal to grant permission accompanied by an "unless" order. However, this would not necessarily give finality within the suggested timescale. The Appellant could ask for an extension. If the appeal is struck out it could apply for it to be reinstated. Even if adequate grounds are provided, there is no guarantee that the case would be pursued efficiently in the future and the past conduct of the matter suggests that it is more likely than not that there would be further delays.

104. Although it does not form part of my decision, I note that the Appellant did not provide Mr Hastings with any instructions within the time limit allowed following the hearing about whether it wishes to appeal my decision or not.

105. I cannot consider whether the Appellant's case is sufficiently strong or weak to outweigh other factors as the Appellant has not, so far, explained what its case is! Having said that, the fact that the Appellant has not provided any of the evidence or information required by HMRC or any grounds of appeal suggests that its case is likely to be weak. There is certainly nothing to suggest that the Appellant's case is likely to be strong enough to be of significant weight in the balancing exercise.

106. I note Mr Abernethy's comments about the prejudice which would be suffered by HMRC if the appeal proceeds. Clearly, the Appellant will suffer significant prejudice if the appeal is not allowed to proceed as it will lose the security it has already paid and will not have the opportunity to challenge the Post Clearance Demand Note for the considerable sum of £550,592.64.

DECISION

107. I have found that there was a significant delay in making the appeal and that there was no good reason for that delay.

108. Having considered all the circumstances of the case and having carried out the balancing exercise required by *Martland*, I have decided to refuse permission to appeal out of time.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

109. 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.

**MARILYN MCKEEVER
TRIBUNAL JUDGE**

Release date: 23rd NOVEMBER 2023