Neutral Citation: [2024] UKFTT 00589 (TC)

Case Number: TC09228

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video hearing]

Appeal reference: TC/2023/00263

LATE APPEAL – application to make a late appeal against a post-clearance demand note in respect of customs duty and import VAT - revaluation of imported goods by HMRC – reasonable grounds for doubting the declared prices and customs values declared by the Appellant – appeal 122 days late - Martland applied – serious and significant delay – no good reason – balance of prejudice between the parties – application refused

Heard on: 13 April 2024
Judgment date: 4 July 2024

Before

JUDGE NATSAI MANYARARA
CELINE CORRIGAN

Between

IBRAHIM AMIR (formerly ABUU MIXUDIIN)

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Ibrahim Amir, Litigant-in-Person

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

DECISION

INTRODUCTION

1. The Appellant (Ibrahim Amir) seeks permission to make a late appeal against HMRC's decision, dated 20 July 2022, to charge customs duty and import VAT as follows:

Type of duty	**Amount due**
Customs Duty	£11,097.38
Import VAT	£17,826.89
Total	**£28,924.27**

2. The decision concerns three importations of goods ('the Goods') by the Appellant in 2019. The decision was followed by a post-clearance demand note - commonly referred to as a C18 - on 28 July 2022. HMRC completed checks to verify the values and classifications declared on the Goods by the Appellant. As part of the enquiry, HMRC compared the values declared by the Appellant to data held by HMRC showing the values declared at importation by other importers for goods comparable to those imported by the Appellant. HMRC concluded that the values declared by the Appellant were incorrect. The Goods were, therefore, revalued.

3. With the consent of the parties, the form of the hearing was V (video). 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.

4. The documents to which we were referred were: (i) the Hearing Bundle consisting of 525 pages; and (ii) the Home Treatment Team discharge summary plan relating to the Appellant's wife.

BACKGROUND FACTS

5. On 2 July 2019, 11 July 2019 and 4 August 2019, the Appellant imported the Goods as follows:

Import Entry	**Entry Date**	**Entry No.**
Entry 1	2 July 2019	005256L
Entry 2	11 July 2019	033548V
Entry 3	4 August 2019	021379T

6. All items were declared for free circulation using Customs Procedure Code (CPC) 4000000.

7. In January 2020, Officer Nick Jones opened an enquiry in relation to the Appellant's customs and international trade records. There were some delays with the progress of the enquiry due to the COVID-19 pandemic.

8. On 7 May 2021, Officer Jones wrote to the Appellant with a view to checking the Appellant's records in respect of several importations. Officer Jones further asked for copies of the documentation that the Appellant had to support the imports that are the subject of the decision. Officer Jones also contacted the freight forwarders that the Appellant had employed

in relation to the imports. The freight forwarders provided Officer Jones with documentation concerning the Goods. The Appellant did not, however, respond to the letter dated 7 May 2021.

9. In the absence of a response from the Appellant, Officer Jones considered the documentation provided by the freight forwarders, together with the information provided by the Inland Pre-Clearance ('IPC') team. The information provided by the IPC team showed the valuations declared for the Goods by the Appellant to be lower than those declared by other traders for comparable goods. In light of this information, Officer Jones had doubts that the values declared by the Appellant were accurate.

10. To determine an accurate value for the Goods, Officer Jones requested that HMRC's "Revaluation Tool" be run against the Appellant's declared import values. The tool determines a value using comparable import data, and checks whether the item price per kilo declared is within HMRC's acceptable limits. The methodology is based on an analysis of recent and comparable previously determined imported customs values of a particular commodity exported from a particular country, within a particular timeframe. From this analysis, HMRC are able to identify comparable imported goods based on the type of import declarations being assessed. The outcome of the analysis is used to determine a reasonable threshold which identifies imports that HMRC believe to be instances of under-declaration. The analysis also provides an alternative, reasonable legitimate value for imports.

11. The Revaluation Tool identified eleven items across Entry 1 and Entry 2 (005256L & 033548V), where the values declared were below the acceptable parameters of comparable import values. The discrepancies between the declared prices per kilo and the reasonable legitimate prices per kilo identified by the Revaluation Tool were set then out in a schedule.

12. On 3 May 2022, Officer Jones sent a "Reasonable Doubts" letter to the Appellant. The letter explained HMRC's doubts and invited the Appellant to provide any information, or documentation, that he had in order to dispel HMRC's doubts. The information was required by 30 May 2022. Once again, the Appellant did not respond to this letter.

13. On 17 June 2022, Officer Jones sent the Appellant a "Right to Be Heard" ('RTBH') letter, setting out the intention to issue a demand to pay import duties. The Appellant had until 17 July 2022 to respond. Again, the Appellant did not respond this letter.

14. On 20 July 2022, Officer Jones sent the Appellant a Decision Letter demanding the payment of £28,924.27. The letter explained that the Appellant had the right to request a review, or to appeal the decision. The letter further explained that an appeal had to be made within 30 days of the decision.

15. There are two parts to the decision:

16. The first part of the decision relates to two items imported in Entry 1 and seven items imported as part of Entry 2 ("*the Revalued Items*"). From the post-clearance checks carried out, HMRC did not accept the transaction values which the Appellant had declared for the Revalued Items on the grounds that HMRC had reasonable doubts that the declared transaction values represented the full amount paid, or payable, for the Goods. The Appellant failed to provide HMRC with sufficient evidence to dispel those doubts.

17. The second part of the decision relates to hair straighteners ("*the Hair Straighteners*"), which were imported under Entry 3. The value declared in the customs declaration was AED 280, whereas the invoice provided by the Appellant stated that the price paid was £280. The decision was taken to recalculate the import duty and VAT due based upon the true price of £280.

18. On 28 July 2022, Officer Scott Kane sent a C18 to the Appellant. The cover letter which accompanied the C18 explained the 30-day time-limit for providing any additional information, requesting a review, or appealing to the Tribunal. The letter further included the address to which the Appellant needed to send any new information, or request for a review. The Appellant had until 7 August 2022 to respond.

19. On 14 October 2022, Officer Jones received a letter from the Appellant (dated 19 August 2022). The letter had originally been sent to Officer Kane in Belfast. The letter suggested that the Appellant had not received any of Officer Jones' earlier correspondence.

20. Officer Jones replied to the Appellant on 21 October 2022. The letter enclosed a copy of Officer Jones' Decision Letter, the schedule of calculations and a schedule explaining the reasons for HMRC's doubts about the declared value of the Goods. The letter also explained that although the Appellant was technically out of time for an appeal, an appeal was the only option available to him.

21. On 11 November 2022, Officer Jones received a further letter from the Appellant, which indicated that he wished to appeal against the decision. The letter further suggested that the Appellant had not been in a fit state of mind to read, and respond to, Officer Jones' letters due to the ill-health of his wife and his responsibilities caring for his wife and their six children.

22. On 12 January 2023, the Appellant's representatives provided HMRC with a statutory declaration indicating that the Appellant had changed his name from "Abuu Muxidiin" to "Ibrahim Ali Amir", on 15 November 2021.

THE HEARING

23. At the commencement of the hearing, Mr Abernethy set out HMRC's objection to the late appeal - in further amplification of the submissions made in the Statement of Reasons - with reference to the three-stage process set out in *Martland v R & C Comrs* [2018] UKUT 178 (TCC) ('*Martland*'). He submitted, in summary, that:

> (1) The delay in making the appeal was five months from the date of the C18 on 28 July 2022, and three months from the date when the Decision Letter was re-issued to the Appellant on 21 October 2022.
>
> (2) The Appellant failed to respond to correspondence issued by Officer Jones on 7 May 2021, 3 May 2022, 17 June 2022 and 20 July 2022 (the Decision Letter).
>
> (3) The offer of review and/or appeal was clearly set out in the Decision Letter.
>
> (4) Whilst the Appellant refers to not having received the Decision Letter, the Appellant's letter to HMRC on 19 August 2022 attached a copy of the Decision Letter which was issued to the addresses held on file for the Appellant by HMRC. The Decision Letter advised the Appellant to appeal if he disagreed with the decision.
>
> (5) Following a phone call on 4 November 2022, where the matter was explained to the Appellant and his accountant, a valid Notice of Appeal was not submitted until a further two months had passed.
>
> (6) The Appellant only mentioned his caring responsibilities retrospectively in his letter dated 11 November 2022. This is despite the fact that the opening letter sent to the Appellant on 7 May 2021 required him to inform HMRC of any health or personal circumstances that may make it difficult for him to deal with HMRC.

24. We heard oral evidence from Officer Jones. Officer Jones is a Compliance Officer with HMRC. In his oral evidence, he adopted the contents of his witness statement, dated 27

November 2023, as being true and accurate. The witness statement set out the background facts leading up to the decision, as set out in the "Background Facts" above.

25. We also heard oral evidence from the Appellant. The Appellant was assisted by a Somali interpreter during the hearing, and he was supported by his daughter for the majority of the hearing. The Appellant's evidence was that the delay in making an appeal arose as a result of:

(1) a lack of understanding about the need to appeal within the time-limit;

(2) his wife being seriously ill; and

(3) his caring responsibilities in respect of his six children (two of whom are disabled).

26. Whilst not relevant to the issue of whether the late appeal should be admitted, the Appellant added that HMRC are demanding further payment of customs duties and import VAT without substantiating the amount of the Goods; and that he imported end of year stock. Whilst the Appellant had earlier claimed not to have received the correspondence from HMRC (in his correspondence to HMRC), he did not refer to the non-receipt of correspondence in his Notice of Appeal, but raised this claim once again during the hearing.

27. At the conclusion of the hearing, we reserved our decision and subsequently issued a Summary Decision. We now give our full findings of fact and reasons for the Decision.

FINDINGS OF FACT

28. Having heard the evidence, we find that the Appellant was an evasive witness who was prone to give his evidence in a long-winded manner, often with little or no regard to the question actually put. We further find that the Appellant often tailored his responses to what he wanted to say, as opposed to what he was being asked. Whilst he relied on the services of a professional interpreter during the hearing, it was clear from his attempts to answer some questions before they were interpreted that the Appellant understood the questions being asked in English. We find that:

(1) the Appellant was represented when HMRC's compliance check started.

(2) the letters sent by Officer Jones to the Appellant, including the Decision Letter, were sent to all of the addresses that HMRC had on file for the Appellant, and none of the correspondence was returned to HMRC undelivered. One of the addresses was the Appellant's Principal Place of Business ('PPOB'), which was provided by the Appellant's own representative.

(3) the Appellant did not notify HMRC that he was caring for his wife and had moved to the accommodation that his children reside in to care for them. In any event, the Appellant only moved in to the accommodation that his children were residing in July 2022, which is after the correspondence dated 7 May 2021, 3 May 2022 and 17 June 2022 had been sent to him by Officer Jones (including to the Appellant's PPOB), which he failed to respond to.

(4) the Appellant clearly received, and responded to, the C18 (which is dated 28 July 2022). The Decision Letter was re-issued to the Appellant on 21 October 2022. The Appellant still failed to lodge an appeal until January 2023.

(5) The Appellant continued to trade during the time that he was said to be caring for his children due to the ill-health of his wife and the delivery address for those imports was the Appellant's PPOB. The Appellant, therefore, still had access to this address.

29. We, therefore, make these findings of fact.

THE AUTHORITIES LEADING UP TO MARTLAND

30. The application for permission to make a late appeal in the circumstances of this appeal is governed by s 16(1F) of the Finance Act 1994. This confers a statutory discretion on the Tribunal to permit an appeal to be made late.

31. The principles applicable to determining the issue of delay have been the subject of much consideration and adjudication. In *BPP Holdings v R & C Comrs* [2017] SC 55 ('*BPP Holdings*'), a direction had been made by the First-tier Tribunal ('FtT') indicating that HMRC would be barred from participating in proceedings if the direction was not adhered to. This was the relevance of the strict approach to the need to adhere to time limits. The differences in fact in *BPP Holdings* and the application before us do not negate the principle established in relation to the need for statutory time limits to be adhered to.

32. In *BPP Holdings,* the court endorsed the approach described by Morgan J in *Data Select Ltd v R & C Comrs* [2012] STC 2195 ('*Data Select*'), where he described the approach in the following way:

> "[34] … Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time? The court or tribunal then makes its decision in the light of the answers to those questions.
>
> …
>
> 37] In my judgment, 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... The general comments in the above cases will also be found helpful in many other cases. Some of the above cases stress the importance of finality in litigation. Those remarks are of particular relevance where the application concerns an intended appeal against a judicial decision. The particular comments about finality in litigation are not directly applicable where the application concerns an intended appeal against a determination by HMRC, where there has been no judicial decision as to the position. None the less, those comments stress the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled and that point applies to an appeal against a determination by HMRC as it does to appeal against a judicial decision."

33. Helpful guidance can also be derived from the three-stage process set out by the Court of Appeal in *Denton & Ors v T H White Limited & Ors* [2014] EWCA Civ 906 ('*Denton*'). Although the third stage of that guidance, as set out by the majority, includes the requirement to give particular weight to the efficient conduct of litigation and the compliance with rules etc., by way of summary, the majority in the Court of Appeal in *Denton* described the three-stage approach in the following terms, at [24]:

> "We consider that the guidance given at paras 40 and 41 of Mitchell remains substantially sound. However, in view of the way in which it has been interpreted, we propose to restate the approach that should be applied in a little more detail. A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)] …"

34. The approach to the consideration of an application to extend time should now follow that set out by the Upper Tribunal in *Martland*. That case concerned a late appeal to the FtT. The approach adopted followed from a consideration of authorities, including *BPP Holdings*. The case of *Martland* held that the principle of fairness and justice is applicable, as a general matter, to any exercise of a judicial discretion. Applying the three-stage approach adopted in *Denton*, the Upper Tribunal in *Martland* set out the following staged-approach, at [44]:

(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 tribunal is unlikely to need to spend much time on the second and third stages – though this cannot be taken to mean that applications can be granted for very short delays without moving on to a consideration of those stages.

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

(3) The tribunal 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 reasons given for the delay and the prejudice which would be caused to both parties by granting or refusing the extension of time.

35. This approach was confirmed by the Upper Tribunal in *Websons (8) Limited v HMRC* [2020] UKUT 0154 (TCC).

DISCUSSION

36. It is well established that the Tribunal must take all relevant matters into account when exercising its discretion to admit a late appeal: *Data Select*. While this means that the Tribunal might, in appropriate circumstances, grant leave to appeal out of time to a taxpayer without a reasonable excuse, it also means that the Tribunal will take all matters into account and so, a taxpayer with a reasonable excuse will not necessarily be granted permission to appeal out of time. There are no fetters given in the legislation on the exercise of discretion by the Tribunal. In the context of an application to make a late appeal, the obligation is simply to take into account of all of the relevant circumstances, and to disregard factors that are irrelevant. For the following reasons, we have decided not to give permission for the appeal to be notified late:

The length of the delay

37. In respect of the first stage, there can, in our view, be no argument but that the delay in making an application to appeal was both serious and significant. The delay in making an appeal in the application before us is 122 days. The length of the delay is to be considered by reference to the time-limit for submitting an appeal. This was confirmed in *Romasave (Property Services) Ltd v R & C Comrs* [2015] UKUT 254 (TCC) ('*Romasave*'), at [96], where Upper Tribunal held that:

> "In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant."

38. In *Secretary of State for the Home Department v SS (Congo) & Ors* [2015] EWCA Civ 387, the Court of Appeal, at [105], has similarly described exceeding a time-limit of 28 days for applying to that court for permission to appeal by 24 days as "significant", and a delay of more than three months as "serious". The Court of Appeal was not, however establishing a principle that delays of less than three months are excusable. The relevant decision in this appeal was made on 20 July 2022. It is the decision, rather than the C18, which is appealable. The right of appeal was required to be exercised within 30 days of the date of the Decision Letter (i.e., by 9 August 2022). In the context of a 30-day time-limit, the delay is, indeed, serious and significant.

The reasons for the delay

39. In relation to the second stage, and the reasons why the default occurred, the Appellant submits, in his Grounds of Appeal, that: (i) he lacked understanding of what was required of him; (ii) his spouse was seriously ill and he was caring for six children – two of whom are disabled; (iii) HMRC are demanding further payment of customs duties and import VAT without substantiating the amount claimed; and (iv) he imported end of stock goods.

40. In respect of the first of the Appellant's submissions, and his claimed lack of knowledge as to what he was required to do, the incontrovertible fact of this application is that despite the fact that the Appellant was unrepresented at the hearing before us, he has been represented since the compliance check started. The Appellant has not raised any failings on the part of his representatives in respect of the failure to make a timely appeal, or to adhere to statutory time limits. In any event, failings on the part of a representative are considered to be failings on the part of the Appellant. In *HMRC v Katib* [2019] UKUT 189 (TCC) ('*Katib*'), the Upper Tribunal concluded that the lack of experience of the appellant, and the hardship that is likely to be suffered, was not sufficient to displace the responsibility on the appellant to adhere to time limits. The duty remains on the Appellant to ensure that his obligations are adhered to.

41. In *Subway London Ltd v HMRC* [2019] UKFTT 579 (TC), Judge Zaman summarised the reasoning of the Upper Tribunal in *Katib* as follows:

> "64…
>
> (1) failures by the taxpayer's adviser should generally be treated as failures by the taxpayer;
>
> (2) the general rule that the failure of an adviser to advise the taxpayer of the deadlines for making appeals, or to submit timely appeals on his behalf, is unlikely to amount to a "good reason" for missing those deadlines when considering the second stage of the evaluation required by *Martland*;
>
> …
>
> (6) given the particular importance of respecting statutory time limits, neither the taxpayer's complaints against his adviser nor his own lack of experience are sufficient to displace the general rule that a taxpayer should bear the consequences of his adviser's failings;
>
> (7) this conclusion is fortified by the fact that there were some warning signs that should have alerted the taxpayer to the fact that the adviser was not equal to the task – the taxpayer was still receiving threats of enforcement action, and the advice to "cease to be a man by making a declaration to this effect" should have alerted the taxpayer to the warning signs;
>
> …
>
> (9) whilst the financial consequences of the taxpayer not being able to appeal were very serious because his means were limited such that he would lose his home, this factor was not as weighty as the Tribunal said it was. The core point is that the taxpayer would suffer hardship if he (in effect) lost the appeal for procedural reasons. However, that could be propounded by large numbers of taxpayers, and it does not have sufficient weight to overcome the difficulties posed by the fact that the delays were very significant, and there was no good reason for them."

42. Whilst the Appellant was not represented at the hearing before us, he nevertheless confirmed that he was ready to proceed with the hearing as the fees required by his representative were considered by him to be high. In any event, as the Tribunal in *Martland* noted, at [47]:

> "Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay..."

43. Furthermore, as Moore-Bick LJ said in *Hysaj, R (in the application of) v Secretary of State for the Home Department* [2014] EWCA Civ 1633 ('*Hysaj*'), at [44]:

> "being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules"

44. The evidence before us supports a finding that the Appellant was able to deal with the suppliers from whom he purchased goods in various countries (Turkey, Dubai and China). The Appellant has not evidenced his claim that he was only dealing with Somali speakers throughout the period that he was importing the Goods. Furthermore, the Appellant was able to correspond with freight forwarders who were not said to be Somali speakers.

45. An alternative argument that was raised in the Appellant's correspondence to HMRC was that he had not received any correspondence from HMRC until the C18 was received on 28 July 2022. We have already considered that the Appellant did not repeat this argument in his Notice of Appeal, but referred to it again during the hearing. As the Appellant has raised the issue of non-receipt of correspondence during the hearing, we have considered the documentary evidence and the submissions made in this respect.

46. Having considered all of the evidence in the round, we find that the Appellant's claim not to have received any correspondence goes against the weight of the evidence that is before us. This is because the Appellant's own agent provided the address at Unit 6, Shurgard UK ('*the Shurgard address*') to HMRC as being the Appellant's PPOB. HMRC sent correspondence to this address up to, and including, the Decision Letter. It is also the address that is included in two out of the three Customs Declarations in issue in this appeal. Two further addresses were notified to HMRC by the Appellant. They are the address at 97 Western Road ('*the Western Road address*') and the address at 37 Marlborough Road ('*the Marlborough Road address*'). We are satisfied that all of the relevant correspondence issued by HMRC was sent to all three addresses, as clearly shown by the letters included in the Hearing Bundle, and as considered during the hearing. The Appellant did not dispute that he was connected to all of these addresses.

47. The Interpretation Act 1978, at s 7 (which relates to service by post), provides that:

> "Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

48. The letters are, therefore, deemed to be received, unless the contrary is proved. We are satisfied that all of the relevant letters (including the Decision Letter) were sent to the address(es) that HMRC had on record for the Appellant, and there is no suggestion that they were returned undelivered. There is no suggestion on the evidence before us that there were any difficulties with the postal service at around the time of those deliveries. We find that there is a long history of not responding to correspondence by the Appellant, which is unexplained, or not adequately explained. We further find that the claim not to have received any correspondence is at odds with the alternative claim that the Appellant did not understand what was required of him in relation to making an appeal.

49. The Appellant has also been inconsistent about whether, or not, he received the Decision Letter dated 20 July 2022. Whilst he initially stated that he did not receive any

correspondence from HMRC (including the Decision Letter), he departed from this claim in his oral evidence by referring to not having opened the Decision Letter when he received it; which we find would not be a good reason for failing to make a timely appeal. Moreover, the Hearing Bundle includes a copy of the Decision Letter and it is clear that it was sent to the Marlborough Road address, which the Appellant confirmed was his residential residence.

50. We find that the correspondence sent to the Appellant by HMRC included warnings about the time-limits for submitting an appeal, which the Appellant did not adhere to. Materially, the Decision Letter included the following instruction:

> ***"What to do if you disagree***
>
> *If you disagree with my decision, then this letter is our offer to review that decision. You can:*
>
> - *accept our offer of a review*
> - *appeal to an independent tribunal*
>
> *You cannot accept our offer of a review and appeal to the tribunal at the same time.*
>
> *If you accept the offer of a review, an HMRC officer not previously involved in the matter will look at your case again. If you disagree with the outcome of the review, you can still appeal to the tribunal.*
>
> *If you want a review, you need to:*
>
> - *write to us within 30 days of the date of this letter telling us why you think our decision is wrong*
> - *send us any new information that you want us to consider*
>
> *You need to write to the address at the top of this letter.*
>
> *If you need longer than 30 days to send us new information, please contact us to ask for this time limit to be extended. You should ask for any extension before the 30-day deadline.*
>
> *We'll only accept a request for a review outside this period of 30 days if there's a reasonable excuse for the request being late. The request must be made as soon as possible after the reason for the excuse has ended.*
>
> *If you do not want a review, you can appeal to HM Courts and Tribunals Service (HMCTS), but you must do this within 30 days of the date of this letter."*

51. Indeed, by his own oral evidence, the Appellant received, read and responded to the letter on 28 July 2022, which was also sent to the Marlborough Road address. His response included the following:

> *"I acknowledge receipt of your letter dated 28th July 2022."*

52. The Appellant still failed to lodge a timely appeal until January 2023.

53. In respect of the second of the Appellant's submissions, and the issue concerning the Appellant's wife's illness and his caring responsibilities, we find that the Appellant only raised these issues shortly before the date of the hearing. This issue was not brought to the attention of HMRC at any stage prior to the Appellant's late appeal to the Tribunal. We are satisfied that the letter dated 17 June 2022 from Officer Jones explicitly required the Appellant to inform HMRC of any personal circumstances that applied to him, as follows:

"...

Please tell me if you have any health or personal circumstances that may make it difficult for you to deal with us. I'll help you in whatever way I can."

54. Furthermore, the Appellant's witness statement says very little about his caring responsibilities, or why those responsibilities prevented him from filing a Notice of Appeal with the Tribunal. We, nevertheless, considered the Appellant's claimed mitigating circumstances, in the absence of any opposition by HMRC. We find, however, that the discharge summary provided by the Appellant places his wife's admission and discharge as being in November 2022, which was significantly after the date of the Decision Letter and the C18. We find that by his own oral evidence, the Appellant only temporarily moved in to the property that his children were living in in July 2022. The Appellant did not tell HMRC that he had left the Marlborough Road address and it was incumbent upon him to do so whilst the compliance check was under way. We have, however, found that correspondence was being sent to all addresses held on file for the Appellant.

55. Moreover, the Appellant continued to import goods throughout the period that he was said to be caring for his children (during his wife's illness); this being the period between the decision in July 2022 and the date when the Appellant finally lodged his appeal. We find that this is not indicative of a person who was so overwhelmed by personal circumstances so as to be unable to deal with his personal and business affairs. This is not a finding that the Appellant's wife was not suffering from health problems, but is a balanced appraisal of all of the evidence. Furthermore, the imports during this period included the Shurgard address as the delivery address. This, we find, is the same address to which Officer Jones was sending some of the correspondence that the Appellant claims not to have received.

56. In respect of the third and fourth of the Appellant's submissions, the customs valuation of imported goods is governed by Regulation (EU) No. 952/2013 ("the UCC"). The requirements of the UCC are implemented by the Commission Implementing Regulation (EU) 2015/2447. Article 140(1) of the Implementing Regulation provides that where HMRC has "reasonable doubts" about a declared transaction value, they may ask the declarant to supply additional information to support the declared values. The Appellant was considered to have failed to provide sufficient information. The EU Customs Code Committee's Customs Valuation Section, Commentary No. 6, discusses evidencing values. HMRC are empowered to discard values provided and substitute replacement values in order to determine the correct import duty and/or import VAT payable, in accordance with art. 140 and art. 101(1) of the UCC. Furthermore, the European Court of Justice ('ECJ') Case C-291/15 held that comparatively low values constitute reasonable grounds for doubting the declared prices and customs value declared by an importer.

57. Having considered all of the evidence, cumulatively, we find that no good reasons have been provided for the default which has occurred.

Evaluation of all the circumstances of the case

58. We turn to the third stage in the process; that of having regard to all the circumstances and the respective prejudice to the Appellant and to HMRC. The Upper Tribunal in *Martland* made clear, as is apparent from the authorities, that the balancing exercise at this stage should take into account the particular importance of the need for litigation to be conducted efficiently, and at a proportionate cost, and for statutory time limits to be respected. In that regard, we accept that if the Appellant is unable to pursue his appeal, he will not have an opportunity to challenge the decision. The courts and tribunals have consistently emphasised the public interest in the finality of litigation, and the purpose of a time-limit being to bring

finality: see, for example, *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218 and *Data Select*.

59. In *Martland*, the Upper Tribunal held, at [45] to [46], that the balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently, and at a proportionate cost. The Upper Tribunal also highlighted the need for statutory time limits to be respected. In so doing, the Tribunal must have regard to any obvious strengths, or weaknesses, in the applicant's case. The case of *Global Torch Ltd v Apex Global Management Ltd & Ors (No 2)* [2014] 1 WLR 4495, at [29], referred to the merits of the underlying case generally being irrelevant. As Moore-Bick LJ said in *Hysaj*, at [46], only where the court (or tribunal) can see without much investigation that the grounds of appeal are either very strong, or very weak, will the merits have any significant part to play when it comes to balancing the various factors at stage-three of the process. That should not involve any detailed analysis of the underlying merits.

60. We find that there is considerable force in Mr Abernethy's submission that the Appellant's appeal is extraordinarily weak. This is because the Appellant has failed to rebut the conclusions reached by HMRC in respect of the value of the Goods. We further find that it was well within the Appellant's powers to provide bank statements to substantiate his claim as to the amount that he paid for the Goods. We are satisfied that it would have been a relatively simple and straightforward matter for the Appellant to do this. The Appellant failed to provide bank statements, despite clearly referring to an HSBC Bank account during the hearing.

61. Having considered all of the evidence, we are satisfied that the balance between the prejudice to the Appellant, the prejudice to HMRC, and the administration of justice through the finality of litigation falls firmly on the side of an extension of time being refused. As the Upper Tribunal in *Romasave*, held, at [96]:

> "permission to appeal out of time should only be granted exceptionally, meaning that it should be the exception rather than the rule and not granted routinely."

62. This was also so in *Martland*, at [34]:

> "… the purpose of the time limit is to bring finality, and that is a matter of public interest, both from the point of view of the taxpayer in question and that of the wider body of taxpayers."

63. It is important that time limits are observed, and so, leave to appeal out of time should therefore only be granted exceptionally. HMRC, and therefore the public in general, have the right to finality in tax affairs. Where a taxpayer does not observe the time limits, that should ordinarily be the end of any dispute over liability. We have balanced the competing interests and the arguments presented by the parties.

64. Accordingly, therefore, we hold that the application to make a late appeal is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

65. 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.

NATSAI MANYARARA
TRIBUNAL JUDGE

Release date: 04th JULY 2024